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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

NO. 661

THE FORTY-FOURTH GENERAL ASSEMBLY OF THE STATE OF COLORADO, JOHN LOVE, as Governor of the State of Colorado, HOMER BEDFORD, as Treasurer of the State of Colorado, BYRON ANDERSON, as Secretary of State of the State of Colorado, EDWIN C. JOHNSON, JOSEPH F. LITTLE and WILBUR M. ALTER,

Appellants,

VS.

ANDRES LUCAS and ARCHIE L. LISCO, individually and as citizens of the State of Colorado, taxpayers and electors therein, for themselves and for all other persons similarly situated,

Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

JURISDICTIONAL STATEMENT

DUKE W. DUNBAR
Attorney General
State of Colorado

CHARLES S. VIGIL
E & C Building
Denver, Colorado

RICHARD S. KITCHEN, SR.
First National Bank Building
Denver, Colorado

STEPHEN H. HART
JAMES LAWRENCE WHITE
WILLIAM J. CARNEY, JR.
500 Equitable Building
Denver, Colorado

Attorneys for Appellants

Ray F. Frey Co., Denver, Colo.

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Appellants,

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Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

JURISDICTIONAL STATEMENT

1(a) Appellants appeal from the judgment of the United States District Court for the District of Colorado, entered on July 13, 1964. This judgment was entered on remand from the judgment of the Supreme Court of the United States holding that an amendment to the Constitution of the State of Colorado was repugnant to the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, in *Lucas v. Forty-Fourth General Assembly of Colorado*, No. 508, October Term, 1963,

377 U.S. 713, 84 S.Ct. 1472. The District Court held that the invalid portions of the amendment were not severable from the remaining portions of the amendment, and that the amendment failed *in toto*. Appellants submit this Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented.

OPINION BELOW

The United States District Court for the District of Colorado did not render an opinion on remand from this Court. The judgment entered by the District Court on July 13, 1964, is attached hereto as Appendix A.

JURISDICTION

1(b) The grounds upon which jurisdiction of this Court is invoked are:

(i) This is an appeal from a final judgment of the three-judge District Court on remand from the United States Supreme Court, wherein the District Court, by a 2 to 1 decision, invalidated every section of an initiated Colorado Constitutional Amendment, effectively granting, *in toto*, a request for injunctive relief from the application of the amendment to the Colorado Constitution. The suit was originally brought by appellees under 28 U.S.C. Sec. 1343 and 42 U.S.C. Sec. 1983. The appeal is taken pursuant to 28 U.S.C. Sec. 1253.

(ii) The date of the decree sought to be reviewed is July 13, 1964. The notice of appeal was filed in the United States District Court for the District of Colorado on September 11, 1964, pursuant to 28 U.S.C. § 2101(b).

(iii) It is believed that Section 1253 of Title 28 United States Code confers jurisdiction of this appeal.

(iv) Cases believed to sustain the jurisdiction of this Court include the following:

Lucas v. Forty-Fourth General Assembly of Colorado, probable jurisdiction noted 375 U.S. 938, 84 S.Ct. 351, 11 L.Ed. 2d 270. Decided June 15, 1964, 377 U.S. 713, 84 S.Ct. 1472.

The mandate of the Supreme Court in this case remanded the case "for further proceedings consistent with the views stated here . . . " (377 U.S. 713, 739). Of necessity the lower court was faced with the question of severability of Amendment 7 in determining what remedies were appropriate.

Guinn v United States
238 U.S. 347, 35 S.Ct. 926, 59 L.Ed. 1340 (1915).

Myers v. Anderson
238 U.S. 368, 35 S.Ct. 932, 59 L.Ed. 1349 (1915).

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Florida Lime and Avocado Growers, Inc. v. Jacobsen
362 U.S. 73, 80 S.Ct. 568, 4 L.Ed. 2d. 568 (1960).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

(v) This case involves the severability of an amendment to the Colorado Constitution, commonly referred to as Amendment No. 7, placed by initiative on

the ballot of the election of November 6, 1962, adopted by the people of Colorado at that election. The substantive portions of Amendment No. 7 are set forth in Colo. Sess. Laws, 1963, Ch. 312, p. 1045 et seq., as follows:

"AN ACT

TO AMEND ARTICLE V OF THE STATE CONSTITUTION PROVIDING FOR THE APPORTIONMENT OF THE SENATE AND HOUSE OF REPRESENTATIVES OF THE GENERAL ASSEMBLY AND PROVIDING FOR SENATORIAL DISTRICTS AND REPRESENTATIVE DISTRICTS.

Be It Enacted by the People of the State of Colorado:

"Section 1. Sections 45, 46, and 47 of Article V of the Constitution of the State of Colorado are hereby repealed and new Sections 45, 46, 47 and 48 of Article V are adopted, to read as follows:

"Section 45.—*General Assembly.*—The general assembly shall consist of 39 members of the senate and 65 members of the house, one to be elected from each senatorial and representative district. Districts of the same house shall not overlap. All districts shall be as compact as may be and shall consist of contiguous whole general election precincts. No part of one county shall be added to another county or part of another county in forming a district. When a district includes two or more counties they shall be contiguous.

"Section 46.—*House of Representatives.*—The state shall be divided into 65 representative districts which shall be as nearly equal in population as may be.

"Section 47.—*Senate.*—The state shall be divided into 39 senatorial districts. The apportionment of senators among the counties shall be the same as now provided by 63-1-3 of Colorado Revised Statutes 1953, which shall not be repealed or amended other than in numbering districts, except that the counties of Chey-

enne, Elbert, Kiowa, Kit Carson and Lincoln shall form one district, and one additional senator is hereby apportioned to each of the counties of Adams, Arapahoe, Boulder and Jefferson. Within a county to which there is apportioned more than one senator, senatorial districts shall be as nearly equal in population as may be.

"Section 48.—*Revision of Districts.*—At the regular session of the general assembly of 1963 and each regular session next following official publication of each Federal enumeration of the population of the state, the general assembly shall immediately alter and amend the boundaries of all representative districts and of those senatorial districts within any county to which there is apportioned more than one senator to conform to the requirements of Sections 45, 46 and 47 of this Article V. After 45 days from the beginning of each such regular session, no member of the general assembly shall be entitled to or earn any compensation or receive any payments on account of salary or expenses, and the members of any general assembly shall be ineligible for election to succeed themselves in office, until such revisions have been made. Until the completion of the terms of the representatives elected at the general election held in November of 1962 shall have expired, the apportionment of senators and representatives and the senatorial and representative districts of the general assembly shall be as provided by law. . . . "

QUESTION PRESENTED

1(c) The specific question presented is whether Section 45 and related portions of Section 48, above set forth, may be allowed to stand, after deleting Sections 46 and 47, with the result that:

(i) Colorado will not be required to conduct a state census in the fifth year of each decade, as previously required.

(ii) The size of the Colorado senate will be increased from 35 to 39.

(iii) Members of both the house and senate will be elected from single member districts.

(iv) The initial responsibility for revision of districts shall remain with the legislative branch, with severe penalties on its members for failure to perform their duties.

(v) The revision of districts will be made after each decennial Federal census in accordance with the rulings of the United States Supreme Court.

The question may be further expressed as follows:

(i) Whether those provisions of Article V of the Constitution of the State of Colorado held to be repugnant to the equal protection clause of the Fourteenth Amendment of the United States Constitution by the Supreme Court of the United States on June 15, 1964, in *Lucas v. Forty-Fourth General Assembly of Colorado*, No. 508, October Term, 1963, 377 U.S. 713, 84 S.Ct. 1472, are severable from those provisions of said Article V which were not challenged by any party to this action and which were not held invalid by the Supreme Court.

(ii) Whether the Federal Court should invalidate portions of the State constitutional amendment adopted by the people of the State pursuant to initiative provisions of the State Constitution unless those portions are clearly incomplete and incapable of standing alone, upon deletion of the portions offending the United States Constitution.

STATEMENT

A. Since this appeal stems directly from and is a continuation of a phase of the same case, appellants respectfully request that the exhibits, briefs and appendices thereto filed in *Lucas v. Forty-Fourth General*

Assembly of Colorado, No. 508, October Term, 1963, 377 U.S. 713, 84 S.Ct. 1472, be considered before the Court on this appeal.

Appellees, plaintiffs below, instituted this action attacking the validity of the *apportionment* of the Colorado legislature as it existed in 1962, prior to the adoption of Amendment No. 7. *Lisco v. McNichols*, 208 F. Supp. 471 (D. Colo. 1962). The Colorado Constitution formerly provided for a state census in the fifth year of each decade, for reapportionment after each Federal and state census, for a house of up to 65 members and a senate of up to 35 members and for permissive rearrangement of districts. (1935 Colorado Statutes Annotated, Vol. 5, Colorado Constitution, Article V, Sections 45, 46 and 47.) Subdistricting of multi-member counties was prohibited. No penalties for failure of the legislature to act where provided.

After the adoption of Amendment No. 7 in the November General Election of 1962, the pleadings were amended and the case tried on the plaintiffs' theory that the *apportionment of the senate* as above set forth in Section 47 was invidiously discriminatory in violation of the Fourteenth Amendment of the Constitution of the United States. The District Court, by a 2 to 1 decision, disagreed. *Lisco v. Love*, 219 F. Supp. 922 (D. Colo. 1963).

Plaintiffs, appellees here, appealed. This Court noted probable jurisdiction on December 9, 1963, overruling motions to dismiss or affirm. 375 U.S. 938, 84 S.Ct. 351, 11 L.Ed. 2d 270. This Court then dispensed with the printing of the record, 375 U.S. 961, 84 S.Ct. 481, but requested that certain exhibits be included with the briefs of the parties. The defendants and intervenors thereupon printed substantially all of the record as an appendix to their briefs and separately submitted certain exhibits prior to oral argument.

On June 15, 1964, in *Lucas v. Forty-Fourth General Assembly of Colorado*, No. 508, October Term, 1963, 377 U.S. 713, 84 S.Ct. 1472, this Court reversed the judgment of the District Court by a vote of 6 to 3, and remanded the case for further proceedings consistent with the majority opinion. The majority opinion stated:

> ". . . the apportionment of Senate seats, under Amendment No. 7, clearly involves departures from population-based representation too extreme to be constitutionally permissible, and there is no indication that the apportionment of the two houses of the Colorado General Assembly, pursuant to the 1962 constitutional amendment, is severable. We therefore conclude that the District Court erred in holding the legislative apportionment plan embodied in Amendment No. 7 to be constitutionally valid." 377 U.S. 713, 734-35.

This Court did not discuss either the validity of severability of those provisions of Amendment No. 7 which provided for the division of counties electing more than one senator or representative into single-member districts, or of the other provisions of the enactment, as these questions had not been decided by the District Court, and were not briefed or argued to this Court.

B. Upon the announcement by the United States Supreme Court of its decision on June 15, 1964, in the *Lucas* case, all parties thereto stipulated pursuant to Rule 59 of the Rules of the Supreme Court that the mandate of the Court issue forthwith. Thereafter, on the 26th day of June, 1964, the three-judge District Court reconvened and held argument on various questions presented under the mandate. It issued a ruling on that date that Amendment No. 7 was not severable, and failed *in toto*. A full transcript of the ruling is attached hereto as Appendix B.

Promptly thereafter the Colorado legislature convened in special session and adopted Senate Bill No. 1, Forty-Fourth General Assembly, Second Special Session, 1964. Thereafter and on July 8, 1964, the three-judge District Court for the District of Colorado reconvened to consider the provisions of Senate Bill No. 1 and issued a further ruling that the plan of apportionment embodied in Senate Bill No. 1 comported with the requirements of the Equal Protection Clause. A copy of the transcript of this ruling is appended hereto as Appendix C.

Thereafter, pursuant to the direction of the court below in its said ruling, final judgment was prepared and entered on July 13, 1964 (Appendix A).

C. In the meantime, by reason of the ruling of the court below that Amendment No. 7 was not severable (Appendices A, B and C), the controversy as to whether or not single-member districts could be established under the Colorado Constitution as it existed prior to Amendment No. 7, was litigated in the Colorado Supreme Court. The Colorado Supreme Court had previously declined to decide the merits of the validity of Amendment No. 7. *In re Legislative Apportionment*, 150 Colo. 380, 374 P. 2d 66 (1962). However, in *White v. Anderson*, July 17, 1964, 394 P. 2d 333, the Colorado Supreme Court issued an opinion that subdistricting within counties was not permissible under the former provisions of the Colorado Constitution. This question is not involved in this appeal.

THE QUESTIONS ARE SUBSTANTIAL

1(d) The questions presented are so substantial as to require briefs on the merits and plenary consideration, because:

This appeal involves the obligation of a federal court

to follow local law with respect to the severability of invalid portions of a State Constitution. Once a federal three-judge district court has properly taken jurisdiction of a case, it has jurisdiction over all the issues in the case, local as well as federal. *Florida Lime and Avocado Growers, Inc. v. Jacobsen*, 362 U.S. 73, 80-81, 80 S.Ct. 568, 4 L.Ed. 2d 568 (1960); *Louisville and N.R. Co. v. Garrett*, 231 U.S. 298, 303-04, 34 S.Ct. 48, 58 L.Ed. 229 (1913).

Here the District Court was required to decide the question of severability of a State constitutional amendment. The question of such severability is a question of State law. *Morey v. Doud*, 354 U.S. 457, 470, n. 16, 77 S.Ct. 1344, 1 L.Ed. 2d 1485 (1957).

On questions of the interpretation and application of State laws and State constitutional provisions, federal courts are bound by the decisions of the highest courts of the several States, and must follow State law. *Guinn v. United States*, 238 U.S. 347, 366, 35 S.Ct. 926, 59 L.Ed. 1340 (1915); *Myers v. Anderson*, 238 U.S. 368, 380-381, 35 S.Ct. 932, 59 L.Ed. 1349 (1915); and *Chas. Wolff Packing Co. v. Court of Industrial Relations*, 267 U.S. 552, 562, 45 S.Ct. 441, 69 L.Ed. 785 (1925).

Involved is the fundamental question of the role of the Federal courts in State apportionment cases and the preservation of the manifest will of the people of the sovereign State of Colorado insofar as it is possible to do so, within the limits of the proscriptions of the Fourteenth Amendment to the Constitution of the United States. In *Myers v. Anderson*, *supra*, 238 U.S. 368, 381, this Court said, with regard to a similar situation involving the construction of state election laws:

> "... that albeit the decision of the question was, in the very nature of things, a state one, nevertheless, in the absence of controlling state rulings, it was our duty to pass upon the subject, and that in doing so the overthrow of an illegal standard would not give rise to the

destruction of a legal one unless such result was compelled by one or both of the following conditions: (a) Where the provision as a whole plainly and expressly established the dependency of the one standard upon the other, and therefore rendered it necessary to conclude that both must disappear as the result of the destruction of either; and (b) where, even although there was no express ground for reaching the conclusion just stated, nevertheless that view might result from an overwhelming implication consequent upon the condition which would be created by holding that the disappearance of the one did not prevent the survival of the other; that is, a condition which would be so unusual, so extreme, so incongruous as to leave no possible ground for the conclusion that the death of the one had not also carried with it the cessation of the life of the other."

The District Court failed to apply the doctrine of severability, as interpreted and applied by the Colorado Supreme Court, to the present case. "The rule as to the divisibility of a constitutional provision, a portion of which is held void, is the same as that applied to a statute under similar conditions". *People v. Max*, 70 Colo. 100, 104, 198 Pac. 150 (1921).

The policy of Colorado law as to statutes is in favor of severability. Colo. Rev. Stat. 1953, Section 135-1-5, provides as follows:

"*Severability of statutes.*—If any provision of a statute is found by a court of competent jurisdiction to be unconstitutional, the remaining provisions of the statute are valid, unless it appears to the court that the valid provisions of the statute are so essentially and inseparably connected with, and so dependent upon, the void provision that it cannot be presumed the legislature would have enacted the valid provisions without the void one; or unless the court determines that the valid provisions, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent."

A presumption of severability is applied by the Colorado Supreme Court to the construction of legislation which has been held unconstitutional in some particular:

> "It is an elementary rule of decision that 'if, when the unconstitutional portion (of a legislative act) is stricken out, that which remains is complete in itself, and capable of being executed in accordance with the apparent legislative intent wholly independent of that which was rejected, it *must* be sustained.' [emphasis added] *Newman v. People*, 23 Colo. 300, 309, 47 Pac. 278; *Frost v. Pfeiffer*, 26 Colo. 338, 343, 58 Pac. 147." *In Re Questions of the Governor*, 55 Colo. 17, 21-22, 123 Pac. 660 (1912); *Home Owners' Loan Corp. v. Public Water Works Dist. No. 2*, 104 Colo. 466, 469, 92 P. 2d 745 (1939).

This rule has been consistently applied in Colorado, even in the absence of a "severability" clause in the statute. A severability clause attached to a statute in Colorado is regarded by the Colorado Supreme Court as an *additional* reason for applying a presumption of severability, not as the *only* reason. See *In Re Questions of the Governor*, *supra*, 55 Colo. 17, 21-22; and see *Greeley Transp. Co. v. People*, 79 Colo. 307, 312-313, 245 Pac. 720 (1926). In *Smith Bros. Cleaners & Dyers, Inc. v. People ex rel. Rogers*, 108 Colo. 449, 459, 119 P. 2d 623 (1941), the Colorado Supreme Court said that a severability clause in a statute ". . . should at least be considered as an aid in determining legislative intent." And in *Home Owners' Loan Corp. v. Public Water Works Dist. No. 2*, *supra*, the Court declared that ". . . the omission by the Fifteenth General Assembly of the clause as to validity of different parts of this particular act is immaterial.", 104 Colo. 466, 469, and held the valid portions of the act in question severable.

Another cardinal rule of construction in Colorado is sometimes stated in the following manner:

> "If the invalid portion of an act was apparently an inducement to the passage of the valid, the statute

is not severable." *Denver v. Lynch*, 92 Colo. 102, 108, 18 P. 2d 907, 86 A.L.R. 907 (1932).

This language is a bit misleading because it indicates a concern with the subjective motives of the authors of the law in question, when in fact the Colorado Supreme Court has not gone beyond an examination of the act itself and the history of prior acts to determine whether the valid portions are so connnected with and dependent upon the invalid portions as to prevent the act from making sense if severed. Thus a more accurate statement of the rule in Colorado is that given by Chief Justice Elbert in *People ex rel. Tucker v. Rucker*, 5 Colo. 455, 465-66 (1880):

> " 'Where a part of a statute is unconstitutional, the fact does not authorize the courts to declare the remainder void also, unless all the provisions are connected in subject matter, depending on each other, operating together for the same purpose, or otherwise so connected together in meaning, that it cannot be presumed the legislature would have passed the one without the other. The constitutional and unconstitutional provisions may even be contained in the same section, and yet be perfectly distinct and separate, so that the first may stand though the last fall. The point is not, whether they are contained in the same section, for the distributions into sections is purely artificial, but whether they are essentially and inseparably connected in substance. If when the unconstitutional portion is stricken out, that which remains is complete in itself, and capable of being enforced in accordance with the apparent legislative intent, wholly independent of that which is rejected, it will be sustained.' Cooley's Con. Lim. 178."

Thus the final standard to be applied in Colorado is a somewhat mechanical one, which tests the completeness of the act without the invalid portion, and ascertains that the result is not contrary to the obvious intent of the legislature. See *Sipe v. People ex rel. Milliken*, 26 Colo. 127, 56 Pac. 571 (1899); and see *Smith Bros. Cleaners & Dyers, Inc. v. People ex rel. Rogers*, 108 Colo. 449, 119 P. 2d 623 (1941).

However, even if the subjective motives of the electorate of Colorado be deemed material, all of the evidence in this case would indicate that it was the intent that subdistricting of multi-member counties, the elimination of a state census, and providing enforcement of the redistricting requirements of law were major, independent elements of Amendment No. 7. Specifically as to subdistricting, in recent Colorado history three measures, in addition to Amendment No. 7, relating to reapportionment have been considered and rejected by the people. None of them required subdistricting, while the one rejected in 1954 was very similar to Amendment No. 7 in other respects. *Lisco v. Love*, 219 F. Supp. 922, 931, n. 32; *Lucas v. Forty-Fourth General Assembly of Colorado, supra*, 377 U.S. 713, 727, n. 13. Since subdistricting assures representation of minority groups within large counties, it can fairly be argued that the people of Colorado have expressed an intent that any reapportionment result shall guarantee not only that the majority shall rule but that the minorities shall be protected.

Where the Colorado Supreme Court has struck down an entire act because part of it was found invalid, it has either been because the remainder of the act was so emasculated and incomplete that no legislature could have wished it to stand alone, or because eliminating the invalid part of the act would have given the remainder an ultimate effect quite different from that achieved by the whole act. In *White v. Anderson*, 394 P. 2d. 333 (Colo. 1964), it was held that Senate Bill No. 1, as approved by the District Court, was invalid in its entirety when the provisions for the division of counties into several senatorial and representative districts fell, because the act then contained no provisions whatsoever for representation of Denver and certain other counties, and was incomplete.

Examples of acts where their meaning and effect are drastically changed by the elimination of the invalid portions are found in *Gordon v. Wheatridge Water District*,

107 Colo. 128, 109 P. 2d 899 (1941); *Denver v. Lynch*, 92 Colo. 102, 18 P. 2d 907, 86 A.L.R. 907 (1932); *Leddy v. People ex rel. Attorney General*, 59 Colo. 120, 147 Pac. 365 (1915); *People v. Morgan*, 76 Colo. 504, 246 Pac. 1024 (1926); and *Four-County Metropolitan Capital Improvement Dist. v. Board of County Comm'rs. of Adams County*, 149 Colo. 284, 369 P. 2d 67 (1962).

In this case all of the rules of severability, as well established in Colorado, are satisfied, in that Section 45 of Amendment No. 7, establishing the number of members in the house and senate and providing for single-member districts, and the enforcement provisions of Section 48 are complete in themselves, capable of being executed in accordance with the intent of the people, and wholly independent of the invalid apportionment provisions of Sections 46 and 47. Indeed, Sections 46 and 47 are surplusage, supplanted by the decisions in *Reynolds v. Sims*, 377 U.S. 533, 84 S.Ct. 1362 (1964), and *Lucas, supra;* it is a well established rule in Colorado that an act will be held to be severable where the missing portion can be supplied by an existing rule of law, statute or constitutional provision. See *Coulter v. Board of County Comm'rs. of Routt County*, 9 Colo. 258, 11 Pac. 199 (1886); *Tripp v. Overocker*, 7 Colo. 72, 1 Pac. 695 (1883); *People ex rel. Tucker v. Rucker*, 5 Colo. 455 (1880); *Frost v. Pfeiffer*, 26 Colo. 338, 58 Pac. 147 (1899); *Greeley Transp. Co. v. People*, 79 Colo. 307, 245 Pac. 720 (1926); *Fleming v. McFerson*, 94 Colo. 1, 28 P. 2d 1013 (1934).

What this Court held invalid in *Lucas v. Forty-Fourth General Assembly of Colorado*, 377 U.S. 713, 84 S.Ct. 1472, was ". . . the legislative apportionment plan embodied in Amendment No. 7 . . . . " 377 U.S. 713, 735. Under the presumption of constitutionality accorded legislative enactments, which is " . . . undoubtedly stronger when the law is a constitutional amendment adopted by vote of the people." (District Judge Doyle, dissenting in *Lisco v. Love*,

219 F. Supp. 922, 943 (1963)) no more than necessary should be held invalid.

The importance of this case is not only that the District Court has erred in determining severability, but that it has so clearly failed to apply the established Colorado doctrines of severability to Amendment No. 7. Were this case on appeal from a Court of Appeals, this failure could well constitute a ground for the granting of certiorari under Rule 19 of the Rules of this Court. The Congressional policy has been stated since 1789 in the Rules of Decision Act, 28 U.S.C. § 1652, and as in *Morey v. Doud*, 354 U.S. 457, 77 S.Ct. 1344, 1 L.Ed. 2d 1485 (1957), this Court has taken care to see that Federal Courts gave due respect to local rules of law. Relations between the District Court and the Colorado Supreme Court have already been strained by this case, as the opinions in *White v. Anderson*, 394 P. 2d 333 (Colo. 1964) disclose.

It is respectfully submitted, therefore, that the United States Supreme Court has jurisdiction of this appeal and that the questions presented are substantial and urgent and should be heard by the Supreme Court.

Respectfully submitted,

DUKE W. DUNBAR
Attorney General
State of Colorado

CHARLES S. VIGIL
E & C Building
Denver, Colorado

RICHARD S. KITCHEN, SR.
First National Bank Building
Denver, Colorado

STEPHEN H. HART
JAMES LAWRENCE WHITE
WILLIAM J. CARNEY, JR.
500 Equitable Building
Denver, Colorado

Attorneys for Appellants

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Actions Number 7501 and
7637, consolidated

ANDRES LUCAS and ARCHIE LISCO, individually and as citizens of the State of Colorado, taxpayers, and electors therein, for themselves and for all other persons similarly situated,

Appellants,

vs.

THE FORTY-FOURTH GENERAL ASSEMBLY OF THE STATE OF COLORADO, JOHN LOVE, AS GOVERNOR OF THE STATE OF COLORADO, HOMER BEDFORD, AS TREASURER OF THE STATE OF COLORADO, AND BYRON ANDERSON, AS SECRETARY OF STATE OF THE STATE OF COLORADO,

Appellees.

ORDER, JUDGMENT, AND DECREE.

The within and above captioned matter having come on to be heard before this Court, before Hon. Jean S. Breitenstein, Circuit Judge, United States Court of Appeals, Presiding, and Hon. Alfred A. Arraj, Chief Judge, United States District Court for the District Court of Colorado, and Hon. William R. Doyle, Judge, United States District Court for the District of Colorado, on the 8th day of July, 1964, and the parties and intervenors herein appearing by their several counsel of record and being fully represented, and the Amicus Curiae appearing personally herein;

and all parties being properly before this Court; and the Court having examined the records in this proceeding and having heard statements of counsel and of the amicus curiae, and being fully advised in the premises; and the Court having made findings from the bench and having ordered the preparation of this Order, Judgment, and Decree, NOW, THEREFORE, The Court doth find as follows:

1. That an appeal has heretofore been taken in this matter to the Supreme Court of the United States, as ANDRES LUCAS, et al., etc., v. THE FORTY-FOURTH GENERAL ASSEMBLY OF THE STATE OF COLORADO, et al., being No. 508, October Term, 1963.

2. That the Supreme Court of the United States has on June 15, 1964, delivered an opinion in the said action, wherein it is stated as follows:

> "Since the apportionment of seats in the Colorado Legislature, under the provisions of Amendment No. 7, fails to comport with the requirements of the Equal Protection Clause, the decision below must be reversed. Beyond what we said in our opinion in *Reynolds*, we express no view on questions relating to remedies at the present time. On remand, the District Court must now determine whether the imminence of the 1964 primary and general elections requires that utilization of the apportionment scheme contained in the constitutional amendment be permitted, for purposes of those elections, or whether the circumstances in Colorado are such that appellants' right to cast adequately weighted votes for members of the State Legislature can practicably be effectuated in 1964: Accordingly, we reverse the decision of the court below and remand the case for further proceedings consistent with the views here and in our opinion in *Reynolds v. Sims*."

3. That in pursuance of the said Opinion, judgment of the Supreme Court of the United States has entered, and has been transmitted to this Court, it being thereby specifically ordered and adjudged by the Supreme Court of the United States that the Judgment of the United States District Court be reversed with costs, and the cause be and is remanded to the United States District Court for the District of Colorado for further proceedings in conformity with the opinion of the Supreme Court of the United States.

4. That this Court pursuant to the said judgment has jurisdiction of this action.

5. That, following the transmittal of the said judgment to this Court, and in pursuance of the judgment and mandate of the Supreme Court of the United States, hearing was had before this Court on the 26th day of June, 1964, at Denver, Colorado, all of the parties hereto and the intervenors herein and the amicus curiae herein being represented by counsel and personally, respectively, and being heard.

6. That, at the hearings held on June 26, 1964, the Court announced the ruling that on the question of the severability of Amendment Number 7, Judge Doyle and Judge Breitenstein felt that Amendment Number 7 was not severable and hence failed in toto. Judge Arraj dissented from that ruling. At the same hearing, on the question whether or not Section 47 of Article V of the Colorado Constitution prohibited subdistricting, Judge Arraj and Judge Breitenstein concluded that it did not, and Judge Doyle disagreed with that decision. This Court unanimously found and determined that the imminence of the 1964 elections did not require the utilization of the apportionment scheme contained in the invalidated Amendment No. 7, and that the time available was sufficient for the State of Colorado to take action which would effectuate the de-

cision of the Supreme Court of the United States, and the Court accordingly ordered that the matter be set over to 9:30 o'clock, A. M., July 15, 1964, for advice as to whether State action would be taken, holding that absent such action, this Court would carry out the duty which it has under the judgment and mandate of the Supreme Court of the United States and provide a method for election of the Colorado legislature in 1964.

7. That, following the hearings in this Court on June 26, 1964, the Governor of the State of Colorado called a Special Session of the General Assembly of the State of Colorado, and that Special Session of the General Assembly of the State of Colorado duly convened.

8. That this Court was advised heretofore that the General Assembly of Colorado had passed Senate Bill Number 1, the terms of which are hereinafter set forth as a part of this Order, Judgment, and Decree, and appear herein below, and that the said bill had been presented to the Governor for signature, with an indication that the Governor intended to sign the said bill.

9. That the attorneys for the Plaintiffs, the Defendants, and the Intervenors appear to agree that for purposes of the 1964 election, the apportionment and establishment of senatorial and representative districts for the General Assembly of Colorado made in said Senate Bill No. 1 comports with the requirements of the Fourteenth Amendment to the Constitution of the United States and the opinion, judgment, and mandate of the Supreme Court of the United States in the aforementioned LUCAS et al. vs. 44th GENERAL ASSEMBLY, et al., and the Court has examined the said Senate Bill No. 1 and finds that for the purposes of the 1964 elections the apportionment and establishment of senatorial and representative districts for the General Assembly of Colorado made in the said Senate Bill No. 1 does comport with the requirements of the Four-

teenth Amendment to the Constitution of the United States and the opinion, judgment, and mandate of the Supreme Court of the United States as aforesaid.

WHEREFORE, IN THE CONTEXT OF THE ABOVE FINDINGS, and of the case as it now stands, it is the opinion of this Court that for the purposes of the 1964 elections the apportionment made in the said Senate Bill Number 1, as set out hereinbelow, does not offend the Fourteenth Amendment to the Constitution of the United States and is adequate to comply with the mandate of the Supreme Court of the United States.

WHEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

1. That the 1964 primary and general elections for the General Assembly of the State of Colorado shall be conducted in the manner prescribed and in conformity with the aforesaid Senate Bill number 1, and in accordance with the apportionment, and establishment of senatorial and representative districts made therein, as follows, towit:

AN ACT

(Senate Bill No. 1. By Senators Rogers, Wenke, and Gill; also Representatives Mackie, Stevens, Myrick, Schieffelin, Stockton, and Griffith.)

CONCERNING THE GENERAL ASSEMBLY, PROVIDING FOR THE APPORTIONMENT OF THE MEMBERS THEREOF, AND ESTABLISHING SENATORIAL AND REPRESENTATIVE DISTRICTS.

Be It Enacted by the General Assembly of the State of Colorado:

Section 1.—*Number of members of general assembly —election from districts.*—The senate of the general assembly of the state of Colorado shall consist of thirty-five members and the house of representatives thereof shall consist of sixty-five members, with one member of the senate to be elected from each senatorial district and one mem-

ber of the house of representatives to be elected from each representative district, as hereinafter established.

Section 2.—*Senatorial districts — number — composition.*—(1) *Districts 1-9—city and county of Denver.*—There shall be nine senatorial districts within the city and county of Denver which shall be numbered as follows and shall consist of the following whole general election precincts:

District 1: Precincts 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, and 624.

District 2: Precincts 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 1501, 1502, 1503, 1504, 1505, 1506, 1507, 1508, 1509, 1510, 1511, 1512, 1513, 1514, 1515, 1516, 1517, 1518, 1519, 1520, 1521, 1522, 1523, 1524, and 1525.

District 3: Precincts 1601, 1602, 1603, 1604, 1605, 1606, 1607, 1608, 1609, 1610, 1611, 1612, 1613, 1614, 1615, 1616, 1617, 1618, 1619, 1620, 1621, 1622, 1623, 1624, 1625, 1626, 1801, 1802, 1803, 1804, 1805, 1806, 1807, 1808, 1809, 1810, 1811, 1812, 1813, 1814, 1815, 1816, 1817, 1818, 1819, 1820, 1821, 1822, 1823, 1824, 1825, and 1826.

District 4: Precincts 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, and 725.

District 5: Precincts 1001, 1002, 1003, 1004, 1005, 1006, 1007, 1008, 1009, 1010, 1011, 1012, 1013, 1014, 1015, 1016, 1017, 1018, 1019, 1020, 1021, 1022, 1023, 1024, 1025, 1026, 1027, 1028, 1029, 1030, 1031, 1032, 1033, 1034, 1035,

1701, 1702, 1703, 1704, 1705, 1706, 1707, 1708, 1709, 1710, 1711, 1712, 1713, 1714, 1715, 1716, 1717, 1718, 1719, 1720, 1721, 1722, 1723, 1724, 1725, 1726, and 1727.

District 6: Precincts 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, and 418.

District 7: Precincts 1101, 1102, 1103, 1104, 1105, 1106, 1107, 1108, 1109, 1110, 1111, 1112, 1113, 1114, 1115, 1116, 1117, 1118, 1119, 1120, 1121, 1122, 1123, 1124, 1125, 1126, 1127, 1128, 1129, 1201, 1202, 1203, 1204, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1212, 1213, 1214, 1215, 1216, 1217, 1218, 1219, 1220, 1221, 1222, 1223, 1224, 1225, 1226, 1227, 1228, 1229, 1230, 1231, and 1232.

District 8: Precincts 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, and 825.

District 9: Precincts 1301, 1302, 1303, 1304, 1305, 1306, 1307, 1308, 1309, 1310, 1311, 1312, 1313, 1314, 1315, 1316, 1317, 1318, 1319, 1320, 1321, 1322, 1323, 1324, 1325, 1326, 1327, 1401, 1402, 1403, 1404, 1405, 1406, 1407, 1408, 1409, 1410, 1411, 1412, 1413, 1414, 1415, 1416, 1417, 1418, 1419, 1420, 1421, 1422, 1423, 1424, 1425, and 1426.

(2) *Districts 10-12—El Paso county.* There shall be three senatorial districts within the county of El Paso which shall be numbered as follows and shall consist of the following whole general election precincts:

District 10: Precincts 19, 20, 21, 22, 31, 32, 33, 37, 38, 39, 40, 41, 42, 48, 49, 50, 51, 52, 53, 54, 56, 64, 65, 66, 67, 68, 69, and 70.

District 11: Precincts 16, 17, 18, 23, 24, 25, 26, 27, 28, 29, 30, 34, 35, 36, 57, 58, 59, 60, 61, 62, 63, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, and 92.

District 12: Precincts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 43, 44, 45, 46, 47, 55, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 93, 94, and 95.

(3) *Districts 13-15—Jefferson county.* (a) For the forty-fifth general assembly only, there shall be two senatorial districts within the county of Jefferson which shall be numbered as follows and shall consist of the following whole general election precincts:

District 13: Precincts 104, 106, 110, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 402, 405, 406, 408, 410, 411, and 412.

District 14: Precincts 101, 102, 103, 105, 107, 108, 109, 401, 403, 404, 407, 409, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 701, 702, 703, 704, 705, 706, 707, and 708.

(b) For the forty-sixth and subsequent general assemblies, there shall be three senatorial districts within the county of Jefferson which shall be numbered as follows and shall consist of the following whole general election precincts:

District 13: Precincts 101, 102, 103, 104, 105, 107, 108, 109, 110, 301, 303, 309, 311, 313, 314, 316, 319, 402, 403, 405, 406, 407, 408, 409, 410, 411, 412 and 503.

District 14: Precincts 401, 404, 501, 502, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 701, 702, 703, 704, 705, 706, 707, and 708.

District 15: Precincts 106, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 302, 304, 305, 306, 307, 308, 310, 312, 315, 317, and 318.

(4) *Districts 16 and 17—Pueblo county.* There shall be two senatorial districts within the county of Pueblo which shall be numbered as follows and shall consist of the following whole general election precincts:

District 16: Precincts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 23, 24, 25, 27, 28, 29, 30, 31, 32, 33, 41, 42, 43, 57, 58, 103, 105, 107, 116, and 117.

District 17: Precincts 34, 35, 37, 38, 39, 40, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 106, 108, 109, 110, 111, and 112.

(5) *Districts 18 and 19—Adams county.* There shall be two senatorial districts within the county of Adams which shall be numbered as follows and shall consist of the following whole general election precincts:

District 18: Precincts 101, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, and 310.

District 19: Precincts 100, 102, 103, 104, 105, 106, 107, 108, 109, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 500, 501, 502, 503, and 504.

(6) *Districts 20 and 21—Arapahoe county.* There shall be two senatorial districts within the county of Arapahoe which shall be numbered as follows and shall consist of the following whole general election precincts:

District 20: Precincts 21, 22, 23, 23A, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43,

44, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, and 89.

District 21: Precincts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, and 64.

(7) *District 22—Adams and Arapahoe counties.*—The counties of Adams and Arapahoe shall constitute the twenty-second senatorial district.

(8) *District 23—Weld county.* The county of Weld shall constitute the twenty-third senatorial district.

(9) *District 24—Boulder county.* The county of Boulder shall constitute the twenty-fourth senatorial district.

(10) *District 25—Boulder and Weld counties.* The counties of Boulder and Weld shall constitute the twenty-fifth senatorial district.

(11) *District 26—Larimer county.* The county of Larimer shall constitute the twenty-sixth senatorial district.

(12) *District 27—Mesa county.* The county of Mesa shall constitute the twenty-seventh senatorial district.

(13) *District 28.* The counties of Morgan, Logan, and Washington shall constitute the twenty-eighth senatorial district.

(14) *District 29.* The counties of Sedgwick, Phillips, Yuma, Kit Carson, Cheyenne, Kiowa, Crowley, Lincoln, and Elbert shall constitute the twenty-ninth senatorial district.

(15) *District 30.* The counties of Gilpin, Clear Creek, Douglas, Park, Teller, Chaffee, Fremont, Custer, and Saguache shall constitute the thirtieth senatorial district.

(16) *District 31.* The counties of Prowers, Bent, Baca, and Otero shall constitute the thirty-first senatorial district.

(17) *District 32.* The counties of Las Animas, Huerfano, Costilla, Alamosa, and Rio Grande shall constitute the thirty-second senatorial district.

(18) *District 33.* The counties of Conejos, Archuleta, Mineral, La Plata, San Juan, Dolores, and Montezuma shall constitute the thirty-third senatorial district.

(19) *District 34.* The counties of Gunnison, Hinsdale, Ouray, San Miguel, Montrose, and Delta shall constitute the thirty-fourth senatorial district.

(20) District 35. The counties of Moffat, Routt, Jackson, Grand, Summit, Eagle, Lake, Pitkin, Garfield, and Rio Blanco shall constitute the thirty-fifth senatorial district.

Section 3.—*Election of senators.*—(1) Senators from the following senatorial districts shall be elected at the general election held in November, 1964, and every four years thereafter: 2, 5, 6, 7, 8, 11, 12, 13, 14, 17, 18, 19, 20, 21, 22, 24, 25, and 35.

(2) Senators from the following senatorial districts shall be elected at the general election held in November, 1966, and every four years thereafter: 1, 3, 4, 9, 10, 15, 16, 23, 26, 27, 28, 29, 30, 31, 32, 33, and 34.

Section 4.—*Holdover senators keep office—vacancies.*—Nothing in this act shall be construed to cause the removal of any senator from his office for the term for which he was elected, but each such senator shall serve the term for which he was elected. In the event of a vacancy in the senate, such vacancy shall be filled as provided by law; provided, if any senator elected at the 1962 general election from a county which by this act contains two or more

senatorial districts, shall vacate his seat on or after the second Tuesday in January, 1965, and prior to the expiration of his term of office in January, 1967, such vacancy shall be filled from the county at large.

Section 5.—*Representative districts — number — composition.*—(1) *Districts 1-18—city and county of Denver.* —There shall be eighteen representative districts within the city and county of Denver which shall be numbered as follows and shall consist of the following whole general election precincts:

District 1: Precincts 101 through 130.
District 2: Precincts 201 through 222.
District 3: Precincts 301 through 324.
District 4: Precincts 401 through 418.
District 5: Precincts 501 through 520.
District 6: Precincts 601 through 624.
District 7: Precincts 701 through 725.
District 8: Precincts 801 through 825.
District 9: Precincts 901 through 923.
District 10: Precincts 1001 through 1035.
District 11: Precincts 1101 through 1129.
District 12: Precincts 1201 through 1232.
District 13: Precincts 1301 through 1327.
District 14: Precincts 1401 through 1426.
District 15: Precincts 1501 through 1525.
District 16: Precincts 1601 through 1626.
District 17: Precincts 1701 through 1727.
District 18: Precincts 1801 through 1826.

(2) *Districts 19-23—El Paso county.* There shall be five representative districts within the county of El Paso which shall be numbered as follows and shall consist of the following whole general election precincts:

District 19: Precincts 19, 20, 21, 22, 39, 40, 41, 42, 48, 49, 50, 51, 52, 53, 54, 69, 70, and 71.

District 20: Precincts 31, 32, 33, 37, 38, 56, 57, 58, 64, 65, 66, 67, 68, 86, 87, and 90.

District 21: Precincts 18, 23, 24, 25, 27, 28, 29, 30, 34, 35, 36, 59, 60, 61, 62, 63, 88, 89, 91, and 92.

District 22: Precincts 2, 3, 4, 5, 6, 7, 8, 16, 17, 26, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 93, 94, and 95.

District 23: Precincts 1, 9, 10, 11, 12, 13, 14, 15, 43, 44, 45, 46, 47, 55, 72, 73, and 74.

(3) *Districts 24-27—Jefferson county.* There shall be four representative districts within the county of Jefferson which shall be numbered as follows and shall consist of the following whole general election precincts:

District 24: Precincts 106, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 302, and 318.

District 25: Precincts 104, 110, 301, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 319, 402, 405, 406, 408, 410, 411, and 412.

District 26: Precincts 101, 102, 103, 105, 107, 108, 109, 401, 403, 404, 407, 409, 502, 503, 504, 507, 508, 509, 511, 513, 515, and 707.

District 27: Precincts 501, 505, 506, 510, 512, 514, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 701, 702, 703, 704, 705, 706, and 708.

(4) *Districts 28-31—Adams county.* There shall be four representative districts within the county of Adams which shall be numbered as follows and shall consist of the following whole general election precincts:

District 28: Precincts 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 211, 212, 213, 214, and 300.

District 29: Precincts 101, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 301, 302, 303, 304, 305, 306, 307, 308, 309, and 310.

District 30: Precincts 102, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, and 322.

District 31: Precincts 100, 103, 104, 105, 106, 107, 108, 109, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 500, 501, 502, 503, and 504.

(5) *Districts 32-35—Pueblo county.* There shall be four representative districts within the county of Pueblo which shall be numbered as follows and shall consist of the following whole general election precincts:

District 32: Precincts 1, 2, 3, 5, 9, 10, 11, 12, 13, 14, 41, 42, 43, 57, 58, 116, and 117.

District 33: 4, 6, 7, 8, 15, 18, 19, 20, 21, 22, 23, 24, 25, 27, 28, 29, 30, 31, 32, 33, 103, 105, and 107.

District 34: Precincts 39, 40, 44, 45, 46, 47, 54, 55, 56, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, and 75.

District 35: Precincts 34, 35, 37, 38, 48, 49, 50, 51, 52, 53, 70, 71, 72, 73, 74, 76, 106, 108, 109, 110, 111, and 112.

(6) *Districts 36-39—Arapahoe county.* There shall be four representative districts within the county of Arapahoe which shall be numbered as follows and shall consist of the following whole general election precincts:

District 36: Precincts 21, 22, 23, 23A, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, and 44.

District 37: Precincts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, and 20.

District 38: Precincts 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, and 64.

District 39: Precincts 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, and 89.

(7) *Districts 40-42—Boulder county.* There shall be three representative districts within the county of Boulder which shall be numbered as follows and shall consist of the following whole general election precincts:

District 40: Precincts 1, 2, 3, 6, 17, 18, 19, 20, 22, 23, and 24 in the city of Boulder; and precincts 6, 7, 12, 17, 18, 19, 20, 21, and 22 in the county of Boulder.

District 41: Precincts 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 21, 25, and 26 in the city of Boulder; and precincts 8, 13, and 16 in the county of Boulder.

District 42: Precincts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11 in the city of Longmont; and precincts 27 and 28 in the city of Boulder; and precincts 1, 2, 4, 5, 9, 10, 11, 14, and 15 in the county of Boulder.

(8) *Districts 43-45—Weld county.* There shall be three representative districts within the county of Weld which shall be numbered as follows and shall consist of the following whole general election precincts:

District 43: Precincts 1, 2, 3, 4, and 9 in ward one in the city of Greeley; precinct 1 in ward two in the city of Greeley; and precincts 2, 4, 9, 10, 11, 13, 17, 18, 19, 20, 21, 25, 30, 31, and 32 in the county of Weld.

District 44: Precincts 3, 4, and 5 in ward two in the city of Greeley; precincts 1, 2, 3, and 4 in ward three in the city of Greeley; and precincts 1, 5, 22, 23, 27, 28, 29, 33, and 34 in the county of Weld.

District 45: Precincts 5, 6, 7, and 8 in ward one in the city of Greeley; precincts 2 and 6 in ward two in the city of Greeley; and precincts 3, 6, 7, 8, 12, 14, 15, 16, 24, and 26 in the county of Weld.

(9) *Districts 46 and 47—Larimer county.* There shall be two representative districts within the county of Larimer which shall be numbered as follows and shall consist of the following whole general election precincts:

District 46: Precincts A1, B1, B2, B3, B4, C1, C2, C3, C4, C5, C6, C7, C8, C9, C10, D1, D2, D3, E1, E2, E3, E4, E5, E6, and 17.

District 47: Precincts 1, 2, 4, 5, 6, 7, 18, 19, 20, 21, 22, 22A, 23, 23A, 24, 25, 26, 27, 28, 29, 30, 31, 33, 34, 35, 37, 38, 39, 40, 41, 44, 46, and 47.

(10) *Districts 48 and 49—Mesa county.* There shall be two representative districts within the county of Mesa which shall be numbered as follows and shall consist of the following whole general election precincts:

District 48: Precincts 1, 4, 5, 8, 12, 13, 15, 16, 19, 20, 26, 29, 30, 32, 36, 37, 38, 39, 40, 42, 44, 47, 49, 52, 53, 55, 56, 58, 59, 60, and 61.

District 49: Precincts 2, 3, 6, 7, 9, 10, 11, 14, 17, 18, 21, 22, 23, 24, 25, 27, 28, 31, 33, 34, 35, 41, 43, 45, 46, 48, 50, 51, 54, and 57.

(11) *District 50.* The counties of Bent, Prowers, and Baca shall constitute representative district 50.

(12) *District 51.* The county of Logan shall constitute representative district 51.

(13) *District 52.* The counties of Fremont and Custer shall constitute representative district 52.

(14) *District 53.* The counties of Otero and Crowley shall constitute representative district 53.

(15) *District 54.* The counties of Las Animas and Costilla shall constitute representative district 54.

(16) *District 55.* The county of Morgan shall constitute representative district 55.

(17) *District 56.* The counties of Yuma, Phillips, Sedgwick, and Washington shall constitute representative district 56.

(18) *District 57.* The counties of Delta, Gunnison, and Hinsdale shall constitute representative district 57.

(19) *District 58.* The counties of Park, Teller, Douglas, Chaffee, and Lake shall constitute representative district 58.

(20) *District 59.* The counties of La Plata and Montezuma shall constitute representative district 59.

(21) *District 60.* The counties of Garfield, Eagle, Pitkin, and Rio Blanco shall constitute representative district 60.

(22) *District 61.* The counties of Summit, Moffat, Routt, Jackson, Grand, Clear Creek, and Gilpin shall constitute representative district 61.

(23) *District 62.* The counties of Conejos, Rio Grande, Mineral, and Archuleta shall constitute representative district 62.

(24) *District 63.* The counties of Alamosa, Huerfano, and Saguache shall constitute representative district 63.

(25) *District 64.* The counties of Montrose, Ouray, San Miguel, Dolores, and San Juan shall constitute representative district 64.

(26) *District 65.* The counties of Lincoln, Kit Carson, Elbert, Cheyenne, and Kiowa shall constitute representative district 65.

Section 6.—*Districts to coincide with county line changes.*—(1) To the extent that boundaries of senatorial and representative districts established pursuant to this act coincide with county lines, such senatorial and repre-

sentative districts shall continue to coincide therewith in the event that such county lines are changed.

(2) In cases involving changes in county lines where newly acquired territory is contiguous to two or more senatorial districts, or to two or more representative districts, or both, within the county to which annexed, such annexed territory shall be included in that contiguous senatorial district or that representative district, or both, containing the lesser population as determined by the last preceding federal decennial census.

Section 7.—*Meaning and scope of terms—changes in precinct boundaries.*—(1) As used in this act, for the purpose only of describing senatorial and representative districts, the term "whole general election precincts" means those precincts existing on July 1, 1964, as fixed by the election commission of the city and county of Denver and the boards of county commissioners of all other counties containing two or more senatorial or representative districts.

(2) Changes in the precinct boundaries of a county shall be made only within the district boundaries of each senatorial and representative district as established by this act.

Section 8.—*Applicability of act.*—This act shall apply to the forty-fifth and subsequent general assemblies, except as provided in section 2 (3) of this act; and sections 63-1-1 through 63-1-7, Colorado Revised Statutes 1953, repealed by this act, shall remain in effect as they existed prior to such repeal and prior to amendment by chapter 143, Session Laws of Colorado 1963, for all purposes of the forty-fourth general assembly.

Section 9.—*Repeal.*—63-1-1 through 63-1-7, Colorado Revised Statutes 1953, and chapters 143 and 144, Session Laws of Colorado 1963, as amended, are hereby repealed.

Section 10.—*Safety clause.*—The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Robert L. Knous
PRESIDENT OF THE SENATE

John D. Vanderhoof
SPEAKER OF THE HOUSE OF REPRESENTATIVES

Mildred H. Cresswell
SECRETARY OF THE SENATE

Donald H. Henderson
CHIEF CLERK OF THE HOUSE OF REPRESENTATIVES

APPROVED.....

John A. Love
GOVERNOR OF THE STATE OF COLORADO

and it is further ordered that the defendants shall conduct and are hereby ordered to conduct the primary and general elections for the said year 1964 for the election of the General Assembly of the State of Colorado in accordance with the provisions of the said Senate Bill and in the manner and in accordance with the apportionment and establishment of senatorial and representative districts therein made and above and foregoing.

2. That this Court will and does hereby retain jurisdiction of this action.

DONE AND SIGNED IN OPEN COURT THIS 13TH DAY OF JULY, 1964, as of July 8, 1964.

BY THE COURT:

.....

JEAN S. BREITENSTEIN, CIRCUIT JUDGE, ASSIGNED

.....

ALFRED A. ARRAJ, CHIEF JUDGE, UNITED STATES DISTRICT COURT

.....

WILLIAM E. DOYLE, JUDGE, UNITED STATES DISTRICT COURT

APPROVED AS TO FORM:

CHARLES GINSBERG and GEORGE LOUIS CREAMER

By /s/ Charles Ginsberg and George Louis Creamer
For the Plaintiffs.

/s/ Duke W. Dunbar

Duke Dunbar, as Attorney General of the State of Colorado, for the Defendants

/s/ Richard S. Kitchen, Sr.
/s/ James L. White
/s/ Stephen H. Hart

For the Intervenors.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

C. A. No. 7501

LUCAS, et al,
Plaintiffs,
v.
44th GENERAL ASSEMBLY, et al,
Defendants.

OFFICIAL TRANSCRIPT
Ruling

Proceedings before the HONORABLE JEAN S. BREITENSTEIN, Circuit Judge, United States Court of Appeals, Presiding, and the HONORABLE ALFRED A. ARRAJ, Chief Judge, United States District Court for the District of Colorado, and the HONORABLE WILLIAM E. DOYLE, Judge, United States District Court for the District of Colorado, beginning at 2:00 o'clock p.m., on the 26th day of June 1964, at Denver, Colorado.

APPEARANCES:

For the Plaintiffs:

GEORGE L. CREAMER, Attorney at Law, Equitable Building, Denver, Colorado.

CHARLES GINSBERG, Attorney at Law, Boston Building, Denver, Colorado.

FRANCIS R. SALAZAR, Attorney at Law, Denver U. S. National Center, Denver, Colorado.

For the Defendants:

DUKE W. DUNBAR, Attorney General, State of Colorado, Denver, Colorado.

ANTHONY F. ZARLENGO, Attorney at Law, Majestic Building, Denver, Colorado.

RICHARD W. BANGERT and JAMES C. WILSON, JR., Office of the Attorney General, State of Colorado, Denver, Colorado.

For the Intervenors:

RICHARD S. KITCHEN, First National Bank Building, Attorney at Law, Denver, Colorado.

CHARLES S. VIGIL, Attorney at Law, Symes Building, Denver, Colorado.

STEPHEN H. HART and JAMES L. WHITE, Attorneys at Law, Equitable Building, Denver, Colorado.

Amicus Curiae:

PHILIP J. CAROSELL, Attorney at Law, Majestic Building, Denver, Colorado.

RULING

JUDGE BREITENSTEIN: We deem it advisable to express our conclusions at this time in the matter presented.

Obviously, it is impossible for us to come down in anything in writing. As counsel have been advised, we, all three of us, have to be away next week.

Here is the way we figured it out. Judge Doyle and I feel that Amendment Number 7 is not severable. That is, as to the provisions on the Senate and the House.

Judge Arraj feels that the provisions of Number 7 relating to the Senate are severable from the provisions relating to the House. That is, as to the apportionment.

The effect of Judge Arraj's position, as I understand

it, is that the Senate should have 39 members, but that the method of apportionment, under the Supreme Court decision, must be rejected as invalid.

On the question of the present constitutional provisions, Judge Arraj and I feel that the effect of Section 47 of Article V is to not forbid the subdistricting of counties. Judge Doyle feels that it does.

We state our views in the hope that they may be of some assistance to the State officials in arriving at a solution of this troublesome problem.

The Supreme Court sent the case back to us for determination of whether the imminence of the '64 election requires the utilization of the apportionment scheme contained in the constitutional amendment, or whether some other method can be effectuated in 1964.

On the presentation of counsel, we feel that the amount of time which is available is sufficient for the State to take action which will effectuate the decision of the United States Supreme Court.

If the State does not do that and does not come up with a solution, the Court will, of course, carry out the duty which it has under the mandate of the United States Supreme Court and come up with some method for the election of the members of the legislature in 1964.

In order that the Court may be advised as to whether the State intends to take action, the Court will set the matter over to 9:30 a.m., July 15th. At that time, we would like to have counsel advise us as to whether State action will be taken or not.

If State action is taken, then we have the additional responsibility of determining whether that action is permissible under the 14th Amendment.

If it does not take action, then the burden is on us to

come up with some plan which will carry out as closely as may be the principles announced by the United States Supreme Court.

Now, does any counsel have any question about what I have said?

MR. CAROSELL: On the question of July 15th, does the Court hold that the State must by that time present to this Court a reapportionment of the legislature?

JUDGE BREITENSTEIN: No, sir, it does not mean that. It means by that time we wish to be advised as to whether proceedings are to be undertaken by the State to do this.

Of course, time is of great importance here. It may be that by July 15th the State can set into operation the machinery necessary to bring about a State enacted apportionment which will comply with what the Supreme Court has said must be done.

We recognize they might not be able to complete that, and if the State sets the machinery in operation, why, we certainly will give you time to complete it, but we can't give too much time because we all know of the imminence of the election.

MR. CREAMER: If it please the Court, it is then, we take it, permissible for the State to embark upon a procedure of apportionment as immediately as the State officials might think practicable before July 15th?

JUDGE BREITENSTEIN: Certainly. We feel that this is essentially a State problem. I believe all of us are in agreement that it is better for the State to solve the problem than for the Federal Court to do it. We recognize that.

At the same time, we recognize our duty and responsibility under the Supreme Court mandate, and if the State doesn't do it, then we have to do something.

Mr. Dunbar?

MR. DUNBAR: I want to be sure that it is clear because I have to report this to the Governor and some of the other State officials.

JUDGE BREITENSTEIN: Yes.

MR. DUNBAR: As I understand it, the entire Amendment 7 is invalid?

JUDGE BREITENSTEIN: That is the view of two members of the Court, Judge Arraj dissenting.

MR. DUNBAR: Yes. That means that we must proceed under the old or the present—if it is invalid, the former constitutional provisions relating to elections are still in effect.

JUDGE BREITENSTEIN: Yes, sir.

MR. DUNBAR: And that being the case, we proceed to reapportion, having in mind the meaning of ratio which we will determine according to the latest Supreme Court decision.

Now, I think by July 15th, we can certainly advise you what is intended to be done, if something hasn't already been done by that time.

JUDGE BREITENSTEIN: Mr. Zarlengo?

MR. ZARLENGO: Just one thing, and redistricting is permitted under Section 47 of the Constitution as it existed prior to Amendment 7?

JUDGE BREITENSTEIN: That is the view of two of us, Judge Doyle dissenting.

Of course, Mr. Zarlengo, just to clarify that, with that view of the majority of the Court, it will be possible for the legislature to adopt or accept the apportionment of the

House as it exists under House Bill 65 and to apportion the Senate on the basis of subdistricting of counties.

That's the view of the majority of the Court.

That would also mean that the Senate is composed of 35 members.

MR. ZARLENGO: Yes, I understand that, Your Honor, and thank you for the clarification.

JUDGE BREITENSTEIN: All right, Mr. Vigil?

MR. VIGIL: I was going to ask the same question.

THE COURT: All right, now does anybody else have any questions, because we want to make it as clear as we possibly can?

MR. CREAMER: Pardon me, I wonder if we might ask that the reporter be requested to transcribe in multiple copies the statement of the Court from the bench, because absent a written decision it will perhaps, assuming that something is to take place before the 15th, be publicly quite imperative that there be some kind of preserved record.

JUDGE BREITENSTEIN: Of course, any party that wants a copy of what has been said can get it by buying it from the reporter.

MR. CREAMER: I will be happy to commission the reporter to do so and do such in such form there be multiple copies available, and we will bear the cost of doing so.

THE COURT: Of course, I am sure all the lawyers here present realize that when you make an oral ruling such as has been made here, there is a possibility of a slip of the tongue and a possibility of a lack of clarity which is lessened at least when you have something in writing.

The reason we have done this the way that we have

orally is because of the pressure of time and the fact that we are leaving town in the morning and we thought that it would be of some advantage to have our views before we had to go.

MR. ZARLENGO: I think it will be a tremendous advantage to have that and we will order a copy and realizing the situation that Your Honor has stated, but it will give us some guidelines that will be of a tremendous amount of help.

MR. DUNBAR: May I express the thanks of the State officials of the Court's position and, of course, action in giving us something immediate now that we will know which way to go.

JUDGE BREITENSTEIN: Well, Mr. Dunbar, we hope the State can work further—

SPECTATOR: May a person—

JUDGE BREITENSTEIN: Are you of counsel in this case?

SPECTATOR: No, I am not. I won't ask a question.

JUDGE BREITENSTEIN: I think we should only hear from counsel.

MR. CREAMER: May the plaintiffs also express their thanks to the Court for its extreme expedition in this matter? It is one in which all of Court and counsel have been aware of the pressing nature of the problems and we do thank the Court for taking this unusual step in expediting it.

(Whereupon, the hearing was concluded.)

REPORTER'S CERTIFICATE

I, Donna G. Spencer, Certified Shorthand Reporter, do hereby certify that I was present at and reported in shorthand the proceedings in the foregoing matter; that I thereafter reduced by shorthand notes reflecting the ruling of the Court at the conclusion of the matter to typewritten form, comprising the foregoing Official Transcript; further, that the foregoing official transcript is a full, true and accurate record of the ruling of the Court in this matter on the date set forth.

Dated at Denver, Colorado, this 26th Day of June, 1964.

/s/ Donna G. Spencer
Donna G. Spencer
Certified Shorthand Reporter

APPENDIX C

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

C. A. No. 7501

LUCAS, et al,
Plaintiffs,

vs.

44th GENERAL ASSEMBLY, et al,
Defendants.

OFFICIAL TRANSCRIPT

Ruling

Proceedings before the HONORABLE JEAN S. BREITENSTEIN, Circuit Judge, United States Court of Appeals, Presiding, and the HONORABLE ALFRED A. ARRAJ, Chief Judge, United States District Court for the District of Colorado, and the HONORABLE WILLIAM E. DOYLE, Judge, United States District Court for the District of Colorado, beginning at 3:30 o'clock p.m., on the 8th day of July, 1964, at Denver, Colorado.

APPEARANCES:

For the Plaintiffs:

GEORGE L. CREAMER, Attorney at Law, Equitable Building, Denver, Colorado.

CHARLES GINSBERG, Attorney at Law, Boston Building, Denver, Colorado.

FRANCIS R. SALAZAR, Attorney at Law, Denver U. S. National Center, Denver, Colorado.

For the Defendants:

DUKE W. DUNBAR, Attorney General, State of Colorado, Denver, Colorado.

ANTHONY F. ZARLENGO, Attorney at Law, Majestic Building, Denver, Colorado.

RICHARD W. BANGERT and JAMES C. WILSON, JR., Office of the Attorney General, State of Colorado, Denver, Colorado.

For the Intervenors:

RICHARD S. KITCHEN, First National Bank Building, Attorney at Law, Denver, Colorado.

CHARLES S. VIGIL, Attorney at Law, Symes Building, Denver, Colorado.

STEPHEN H. HART and JAMES L. WHITE, Attorneys at Law, Equitable Building, Denver, Colorado.

Amicus Curiae:

PHILIP J. CAROSELL, Attorney at Law, Majestic Building, Denver, Colorado.

ALSO PRESENT: The HONORABLE JOHN LOVE, Governor of the State of Colorado.

RULING

JUDGE BREITENSTEIN: At the last hearing on this matter, the Court announced the ruling that on the question of the severability of Amendment Number 7 Judge Doyle and I felt that Amendment Number 7 was not severable and hence failed in toto. Judge Arraj dissented from that.

On the question of whether or not Section 47 of Article V of the Colorado Constitution prohibited subdistrict-

ing, Judge Arraj and I concluded that it did not, and Judge Doyle disagreed with that decision.

In the context of the decisions of the majority of the Court as they now appear, we have considered the positions of the parties as stated this afternoon.

We understand that the Colorado General Assembly has passed Senate Bill Number 1 and that the bill has been presented to the Governor for signature with at least the indication that the Governor intends to sign the bill.

The attorneys for the plaintiffs, the attorneys for the defendants and the attorneys for the intervenors all appear to be in agreement that for the purposes of the 1964 election the apportionment made by Senate Bill Number 1 comports with 14th Amendment requirements and the decision of the United States Supreme Court in the case of Lucas against the 44th General Assembly.

Mr. Carosell, whose appearance here is as an amicus curiae and not as an attorney representing any parties, differs somewhat so far as specific apportionments are concerned.

In the context of the case as it now stands which I have mentioned, on the basis of the statements of position made by counsel and on the basis of the Court's examination of the apportionment made by Senate Bill Number 1, it is the opinion of the Court that for the purposes of the 1964 election the apportionment made by Senate Bill Number 1 does not offend the 14th Amendment to the United States Constitution and is adequate to comply with the mandate of the United States Supreme Court.

Accordingly, an order will be entered requiring the defendants to conduct the 1964 elections in conformity with Senate Bill Number 1 and the Court will retain jurisdiction of the cause.

Judge Arraj, have you any comments on the statement which I have made?

JUDGE ARRAJ: No, I think you accurately and adequately covered it.

JUDGE BREITENSTEIN: Judge Doyle?

JUDGE DOYLE: Fairly stated my position.

JUDGE BREITENSTEIN: Very well, that will be the order of the Court. Now, since this order will at least in theory be an appealable order, we feel that a written judgment must be prepared and entered as promptly as can be, and we will expect the attorneys to collaborate in preparation of a written order and we would like to have that submitted not later than July 14th so that we can give it consideration on the 15th.

MR. SALAZAR: If it please the Court, may I ask a question of the Court pertaining to the order?

JUDGE BREITENSTEIN: Yes.

MR. SALAZAR: The Court has just ordered, as I understand it, that the election is to be in conformity with this bill. Now, there is, it is my understanding, an appeal before the Colorado Supreme Court concerning the subdistricting parts.

JUDGE BREITENSTEIN: Sir, we are entering our order.

MR. SALAZAR: I just wished to point out, if the Colorado Supreme Court—

JUDGE BREITENSTEIN: We will meet other problems when they arise. I have stated what the Court unanimously says will be its order. If other conditions arise which require our attention, we will meet them when, as and if they arise.

This is an order for the 1964 election with the Court retaining jurisdiction.

MR. SALAZAR: I understand that, Your Honor, but I was pointing out, and I am sure the Court is aware, if the Colorado Supreme Court should overrule the subdistricting part, there would be a conflict.

JUDGE BREITENSTEIN: We are not going to even discuss that further, Mr. Salazar.

MR. CREAMER: If it please the Court, as a procedural matter, may I suggest, without intending to be presumptuous but I think procedurally it is my obligation anyway, that I prepare a written order and circulate it to counsel to see if agreement can be obtained on it? I believe as the plaintiff that probably—

JUDGE BREITENSTEIN: Yes, I am afraid the labor is on you.

MR. CREAMER: If I may, I will undertake to do that, and request at this time that the reporter make a transcript of the bench ruling so that I may use that in that circumstance and I will undertake to have it circulated, at least with comment, by the 14th.

MR. GINSBERG: Your Honor—

JUDGE BREITENSTEIN: Pardon me, Mr. Ginsberg. I intended to state this before. If any counsel is uncertain as to the effect of the decision I have stated orally, I wish he would let me now know.

MR. GINSBERG: I am not uncertain, I just had one suggestion to make that might be agreeable.

JUDGE BREITENSTEIN: All right.

MR. GINSBERG: The Governor is here and the legislature is in session. It would seem to me it might be well if they would conclude their function in accordance with the order of Court, their express purpose. In other words, the bill might be enacted into law by the Governor signing and the legislature adjourned.

JUDGE BREITENSTEIN: We are not telling the Governor or General Assembly what to do.

MR. GINSBERG: You are not telling him not to do it.

JUDGE BREITENSTEIN: We are not telling him not to. We expressed the view last time this was a local problem, best solved locally. We wanted to intrude only if as a last resort we had to do it. That is still our attitude. We are not telling anybody what to do except that our order is that the 1964 election will be conducted in accordance with the appropriate legislation.

MR. GINSBERG: Nothing to interfere with the actions of the Governor or legislature.

JUDGE BREITENSTEIN: No, we are not interfering. We are not telling them what to do or not to do. Anything further? Governor?

GOVERNOR LOVE: If it please the Court, although not admitted of counsel in this case I would like to express the appreciation of myself personally and of I am sure the legislators and people of Colorado for your cooperation and prompt handling and willingness to devote your time to this problem.

JUDGE BREITENSTEIN: Well, we are glad the legislature solved it.

Anything further?

MR. CAROSELL: One small question, Your Honor.

JUDGE BREITENSTEIN: Mr. Carosell.

MR. CAROSELL: I understand that this order is to be ready by the 14th of July, am I correct?

JUDGE BREITENSTEIN: That's what we want, yes. We think we have got to bring this to a conclusion and the 15th is going to be the first day we can consider it.

MR. CAROSELL: I understand from the Governor himself he is going to sign the bill tonight.

JUDGE BREITENSTEIN: I don't know anything about that.

MR. CAROSELL: Will there be any conflict?

JUDGE BREITENSTEIN: I don't know anything about that. I am just saying what our order is and we expect the judgment to be submitted so we can consider it on July 15th.

MR. KITCHEN: As I understand, the setting you previously made for July 15th is still a setting of the Court?

JUDGE BREITENSTEIN: No, that is vacated but we have expedited that having this one today and we have gotten statements of counsel and we have taken the action so I see no reason for that unless we find some fault with the form of judgments presented. Maybe we will. You know, judges are a little individualistic at times.

MR. KITCHEN: There is no setting as such?

JUDGE BREITENSTEIN: There is no setting. If we wish to hear counsel again after we review the form of judgments submitted, we will advise counsel.

MR. CAROSELL: Judge, in view of the fact that you have retained jurisdiction, if anything arises that might interfere with the retention of jurisdiction of this Court, what do you instruct us to do?

JUDGE BREITENSTEIN: All I am going to say in answer to this is, I stated positively, not once but several times, that we are retaining jurisdiction and you can take whatever implications from that you wish.

The Court will be in recess.

(Whereupon, the hearing was concluded.)

REPORTER'S CERTIFICATE

I, Donna G. Spencer, Certified Shorthand Reporter, do hereby certify that I was present at and reported in shorthand the proceedings in the foregoing matter; that I thereafter reduced my shorthand notes reflecting the ruling of the Court at the conclusion of the matter to typewritten form, comprising the foregoing Official Transcript; further, that the foregoing Official Transcript is a full, true and accurate record of the ruling of the Court in this matter on the date set forth.

Dated at Denver, Colorado, this 8th day of July, 1964.

/s/ Donna G. Spencer
Donna G. Spencer
Certified Shorthand Reporter

Office-Supreme Court, U.S.
FILED
DEC 11 1964
JOHN F. DAVIS, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1964

No. 661

THE FORTY-FOURTH GENERAL ASSEMBLY OF THE STATE OF COLORADO, JOHN LOVE, AS GOVERNOR OF THE STATE OF COLORADO, HOMER BEDFORD, AS TREASURER OF THE STATE OF COLORADO, BYRON ANDERSON, AS SECRETARY OF STATE OF THE STATE OF COLORADO, EDWIN C. JOHNSON, JOSEPH F. LITTLE, AND WILBUR M. SALTER,

Appellants,

vs.

ANDRES LUCAS AND ARCHIE L. LISCO, INDIVIDUALLY AND AS CITIZENS OF THE STATE OF COLORADO, TAXPAYERS, AND ELECTORS THEREIN, FOR THEMSELVES AND FOR ALL OTHER PERSONS SIMILARLY SITUATED,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO.

MOTION TO DISMISS OR AFFIRM

CHARLES GINSBERG
Boston Building
Denver, Colorado 80202

GEORGE LOUIS CREAMER
928 Equitable Building
Denver, Colorado 80202

Attorneys for Appellees.

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IN THE

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October Term, 1964

No. 661

THE FORTY-FOURTH GENERAL ASSEMBLY OF THE STATE OF COLORADO, JOHN LOVE, AS GOVERNOR OF THE STATE OF COLORADO, HOMER BEDFORD, AS TREASURER OF THE STATE OF COLORADO, BYRON ANDERSON, AS SECRETARY OF STATE OF THE STATE OF COLORADO, EDWIN C. JOHNSON, JOSEPH F. LITTLE, AND WILBUR M. ALTER,

Appellants,

vs.

ANDRES LUCAS AND ARCHIE L. LISCO, INDIVIDUALLY AND AS CITIZENS OF THE STATE OF COLORADO, TAXPAYERS, AND ELECTORS THEREIN, FOR THEMSELVES AND FOR ALL OTHER PERSONS SIMILARLY SITUATED,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO.

MOTION TO DISMISS OR AFFIRM

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1. Appellees hereby move this Honorable Court to dismiss this appeal or, alternatively, to affirm the judgment sought to be reviewed on appeal from the United States District Court for the District of Colorado on the ground that it is manifest that the questions on which the decision of this appeal depend are so insubstantial as to need no further argument.

2. The facts upon which the Motion are based are as follows:

2.1. The present Appellees, as appellants, heretofore appealed to this Court in *Lucas vs. Forty-Fourth General Assembly of Colorado*, 377 U.S. 713, 84 S.Ct. 1472 (No. 508, October Term, 1963) from a judgment of the United States District Court for the District of Colorado, sitting as a statutory court of three judges, denying injunctive relief with reference to an Amendment to the Constitution of the State of Colorado, sometimes referred to and usually called "Amendment No. 7".

2.2. This Court accepted jurisdiction and, on June 15, 1964, rendered an Opinion reversing the judgment of the District Court, holding that under the provisions of Amendment No. 7, there was a failure to comport with the requirements of Equal Protection of the Laws under the 14th Amendment, remanding the case to the District Court for further proceedings, including determination as to whether the imminence of the 1964 general elections required the use of the scheme provided in the invalidated Amendment 7.

2.3. That the right of re-hearing in No. 508, October Term, 1963, was waived, and the parties requested this Court to send down its judgment to the District Court, which was done.

2.4. Immediately on transmittal of the judgment to the District Court, and in accordance with the judgment and the opinion of this Court, the District Court held, on June 26, 1964, a hearing at which all parties were present by counsel and heard.

2.5. At the conclusion of that hearing, the District Court announced from the bench a ruling that on the question of severability of Amendment Number 7, Judges Doyle and Breitenstein felt that Amendment 7 was not severable and hence must fail in toto, Judge Arraj dissenting from that portion of the ruling. At the same hearing, argument was had as to whether, under Article V, Section 47, of the Colorado Constitution as it pre-existed Amendment No. 7, subdistricting was or was not allowable. Judges Arraj and Breitenstein concluded that the provision of the State Constitution permitted subdistricting; and Judge Doyle that it did not.

2.6. The District Court unanimously found and determined that the imminence of the 1964 elections did not require the utilization of the apportionment scheme contained in the invalidated Amendment No. 7, that the time available was sufficient for the State of Colorado to take action which would effectuate the decision of the Supreme Court of the United States, and that the matter accordingly be set over to July 15, 1964, for advice to the District Court as to what State action had been taken, absent which action the District Court would carry out the duty prescribed in the mandate from the Supreme Court.

2.7. Following those hearings, the Governor of Colorado convened a special session of the General Assembly, which duly met, and after deliberation advised the District Court that there had been enacted a reapportionment measure, introduced as Senate Bill No. 1 of the Special Session. Certain other bills were introduced to modify the election laws of the State in view of certain time problems arising, but with which bills this proceeding is in no manner concerned.

2.8. Senate Bill No. 1 was enacted under the old provisions of the Colorado Constitution, disregarding Amendment 7 entirely, but assuming, as ruled by the District Court, that Article V, Section 47, of the Colorado Constitution as it pre-existed Amendment 7 permitted creation of single-member districts.

2.9. The Bill assumed a Senate of 35 members, provided by the Colorado constitution prior to Amendment 7, and made a distribution of members in both the House and Senate which these Appellees, as Plaintiffs, advised the Court was within reasonable numerical limits, as concerns the Fourteenth Amendment.

2.10. The said bill as enacted was signed by the Governor of Colorado.

2.11. Thereafter, there was entered a written order, judgment, and decree signed by the Court on July 13, 1964, as of July 8, 1964, printed as Appendix A of the Jurisdictional Statement, incorporating *in haec verba* the provisions of the Act, and further ordering that the primary and general elections of the General Assembly for 1964 be conducted in accordance with the provisions of the Bill, and in the manner and in accordance with the apportionment and establishment of representative districts therein made.

2.12. The Court retained jurisdiction of the action. The order, judgment, and decree was approved as to form by counsel for all parties.

2.13. Two actions were filed before the Supreme Court of the State of Colorado, being respectively *White*

vs. Anderson, et al., 394 P.2d 333, and *McDonald, etc. vs. Love*, 394 P.2d 345. Each of these actions raised the question whether or not single member districts could, as a matter of State Constitutional Law, be validly allowed under Article V, Section 47, of the Colorado Constitution, as it existed prior to the invalidated Amendment 7, and providing as follows:

> "Senatorial and representative districts may be altered from time to time, as public convenience may require. When a senatorial or representative district shall be composed of two or more counties, they shall be contiguous, and the districts as compact as may be. *No county shall be divided in the formation of a senatorial or representative district.*" (Emphasis supplied).

The Colorado Supreme Court, rendering decisions in those cases, recognized the invalidation of Amendment 7 by the Federal Court, recognized that the prior provisions of the Colorado Constitution were in effect, held (in this respect differing from the majority of the United States District Court) that the quoted section, part of which is emphasized above, did prohibit subdistricting, and ruled that though the act providing for subdistricting was resultantly invalid, the provisions as to apportionment therein made did conform, as held by the United States District Court, to the requirements of the Fourteenth Amendment, and that, accordingly, the 1964 elections should be held as ordered by the United States District Court, in pursuance of orders of this Court.

2.14. The 1964 elections were held, and the General Assembly was elected in accordance with the apportion-

ment made as above indicated, and in conformance with the orders of the United States District Court.

3. This Court has invalidated Amendment 7. The United States District Court has held that that invalidation is complete. The Colorado Supreme Court has accepted the fact that the Amendment, Amendment 7, is invalid in its entirety, and that the pre-existing provisions of the Colorado Constitution are in effect. The instant appeal attempts to inject into the Colorado Constitution fragments of a single amendment, which adopted and submitted as an entirety, must fall as an entirety. These matters, we respectfully submit, were fully decided by this Court heretofore, and no substantial question is presented to this Court for determination here.

BRIEF AND ARGUMENT IN SUPPORT OF MOTION

A. Prior ruling of this Court.

As was discussed at length in the Briefs in No. 508, October Term, 1963, there were submitted, at the 1962 elections, two substantial amendments to the Constitution of Colorado, one of them denominated No. 7 and one of them called No. 8. Each purported to repeal the existing Constitutional provisions on apportionment and concerning the composition of the Colorado General Assembly, Article V, Sections 45, 46, and 47 of the Colorado Constitution.

The United States District Court, in its majority opinion, remarked that there was a choice offered the voters, and seemed to be of the opinion that their selection of Amendment 7 had some prepotent effect. This Court spe-

cifically disagreed, remarking that there were no clear-cut choices presented, that there were numerous aspects to each of the amendments proposed, and that it was a difficult thing to give any specific weight to the approval of either of these schemes of amendment, involving packages of provisions, not separately approvable or approved.

Amendment 7, printed in the Jurisdictional Statement, pages 4 and 5, is a single Act, entitled as such, and denominated "An Act to amend Article V of the State Consittution providing for the apportionment of the Senate and House of Representatives of the General Assembly and providing for Senatorial Districts and Representative Districts." Section 45, as proposed to be changed, increases the number of members of the Senate to 39, provides for a House of 65 members, and provides for single-member districts. Section 46 provides that the House districts shall be as nearly equal in population as may be. Section 47 also provides for a 39-member Senate, for an apportionment upon the basis of a pre-existing statute, adding four members and designating the districts to which they shall be assigned, and requires multiple-member districts to be sub-divided on population basis as nearly as may be, but perpetually freezes other districts. Section 48 provides for future apportionments.

The Court concluded that "the choice presented to the Colorado electorate, in voting on these two proposed constitutional amendments, was hardly as clear-cut as the Court below regarded it", and further that "*neither of the proposed plans was, in all probability, wholly acceptable to the voters in the populous counties,* and the assumption of the Court below that the Colorado voters made a definitive choice between two contrasting alternatives

and indicated that 'minority process in the Senate is what they want' does not appear to be factually justifiable."

This Court has specifically recognized that the problem of single-member, as opposed to multiple-member, districts was an integral matter, part and parcel of the entire dispute, and inseparable therefrom, stating, at page 17 of its Opinion:

> "As appellees have correctly pointed out, a majority of the voters in every county of the State voted in favor of the apportionment scheme embodied in Amendment No. 7's provisions, in preference to that contained in proposed Amendment No. 8, which, subject to minor deviations, would have based the apportionment of seats in both houses on a population basis. However, the choice presented to the Colorado electorate, in voting on these two proposed constitutional amendments, was hardly as clear-cut as the court below regarded it. One of the most undesirable features of the existing apportionment scheme was the requirement that, in counties given more than one seat in either or both of the houses of the General Assembly, all legislators must be elected at large from the county as a whole. Thus, under the existing plan, each Denver voter was required to vote for eight senators and 17 representatives. Ballots were long and cumbersome, and an intelligent choice among candidates for seats in the legislature was made quite difficult. No identifiable constituencies *within* the populous counties resulted, and residents of those areas had no single member of the Senate or House elected specifically to represent them. Rather, each legislator elected from a multimember county represented the county as a whole. Amendment No. 8 as distinguished

from Amendment No. 7, while purportedly basing the apportionment of seats in both houses on a 'population basis, would have perpetuated, for all practical purposes, this debatable feature of the existing scheme. Under Amendment No. 8, Senators were to be elected at large in those counties given more than one Senate seat, and no provision was made for subdistricting within such counties for the purpose of electing senators. Representatives were also to be elected at large in multimember counties pursuant to the provisions of Amendment No. 8, at least initially, although subdistricting for the purpose of electing House members was permitted if the voters of a multimember county specifically approved a representative subdistricting plan for that county. Thus, neither of the proposed plans was, in all probability, wholly acceptable to the voters in the populous counties, and the assumption of the court below that the Colorado voters made a definitive choice between two contrasting alternatives and indicated that 'minority process in the Senate is what they want' does not appear to be factually justifiable."

There was no question raised that any inherent unconstitutionality obtains in electing members at large, and indeed, in footnote 21 to its Opinion, this Court indicates the contrary: "We do not intimate that apportionment schemes which provide for the at-large election of a number of legislators from a county, or any political subdivision, are constitutionally defective. Rather, we merely point out that there are certain aspects of electing legislators at large from a county as a whole that might well make the adoption of such a scheme undesirable to many voters residing in multimember counties."

What is even more to the point, this Court has recognized that the apportionment scheme adopted by Amendment No. 7 is a single fabric. Discussing the fact that even assuming apportionment of the House to be valid under the challenged amendment, the amendment is nonetheless invalid, this Court stated, at pages 20 and 21 of its Opinion:

> "We need not pass on this question, since the apportionment of Senate seats, under Amendment No. 7, clearly involves departures from population-based representation too extreme to be constitutionally permissible, and there is *no indication that the apportionment of the two houses of the Colorado General Assembly*, pursuant to the 1962 constitutional amendment, *is severable.*" (Emphasis supplied)

In footnote 27 to its Opinion, this Court points out the necessity for viewing the legislative apportionment under consideration *as a totality* for purposes of determining constitutionality: "Consistent with this approach, in determining whether a good faith effort to establish districts substantially equal in population has been made, *a court must necessarily consider a State's legislative apportionment scheme as a whole.*" (Emphasis supplied).

The final conclusion of this Court was that "under neither Amendment No. 7's plan, nor, of course, the previous statutory scheme, is the overall legislative representation in the two houses of the Colorado Legislature sufficiently grounded on population to be constitutionally sustainable under the Equal Protection Clause."

It is submitted, most respectfully, that this Court having recognized that neither Amendment 7 nor Amendment

8 was in probability wholly acceptable to the voters of Colorado; it being further recognized that there is no indication that the apportionment of the two houses under Amendment 7 is severable; it having been recognized that apportionment legislation must be viewed as a totality; there having been but a single bill presented to the Colorado people, and no right to vote separately on the several aspects of it; and that bill or Amendment having been expressly declared by this Court not to provide "overall legislative representation in the two houses of the Colorado Legislature sufficiently grounded on population to be constitutionally sustainable under the Equal Protection Clause," there simply is no material issue now before this Court. Amendment 7 was void and declared so, and it is impossible out of that Amendment, voted as a whole, to pick bits and scraps for preservation.

B. A law adjudged unconstitutional is void for all purposes.

It is argued that, if there had been approval of a 39 member Senate as opposed to 35, it would not be void; if there had been approved single-member districts, as a separate matter, they would be valid; and that machinery for securing future reapportionment might if approved be legally operable. Though each of these provisions *might have been* valid if approved by the people, none of them was as such approved or separately submitted for approval, but all were part and parcel of a package, the essential ingredients of which were unconstitutional. Any *speculation* as to what the people *might have done* had the matters been separately submitted to them is idle. Legislation, and certainly constitutional amendment, cannot exist on a fundament of the speculative. It must be certain.

In this circumstance, the People of Colorado are the legislative body. Unless it can be stated with certainty that they would have enacted the fragments of Amendment 7, knowing the basic apportionment scheme contemplated by Amendment 7 to be inoperative, nothing can save the fragments.

A law, whether it be statute or constitutional amendment, adjudged to be unconstitutional, is as if it had never been. It is void for all purposes. Nothing can be done under it, nor rights be built upon it. The Colorado Supreme Court has expressed this matter in *Coulter vs. Routt County*, 9 Colo. 258, 11 Pac. 193 (1886):

> "Mr. Cooley lays down the rule thus: 'When a statute is adjudged to be unconstitutional, it is as if it never had been. Rights cannot be built up under it. Contracts which depend upon it for their consideration are void. It constitutes a protection to no one who has acted under it, and no one can be punished for having refused obedience to it before the decision was made. And what is true of an act void *in toto* is true also as to any part of an act which is found to be unconstitutional, and which, consequently, is to be regarded as having never, at any time, been possessed of any legal force.' . . . " (at page 267).

C. The rule, both as to the effect of invalidity and as to separability, is identical for constitutional provision and for statute.

Constitutional invalidity has the same effect, both as to negation of the enactment, and as to severability, whether the invalid enactment be a statute or a constitutional provision. *People vs. Max*, 70 Colo. 100, 198 Pac.

150 (1921), declared invalid an attempted constitutional provision requiring referendum of judicial decisions involving constitutional questions. Invalidating the provision, the Court remarks that "the rule as to the divisibility of a constitutional provision, a portion of which is held void, is the same as that applied to a statute under similar conditions. 'Where a separation can not be made, and the invalid provision completely detached and treated as independent, the whole act must be pronounced void.'" (at page 104).

To the Colorado Supreme Court in that case it was "inconceivable that the people of Colorado would ever have enacted this law had they realized that in no event could it ever be applied further than to their own constitution, or that they would ever have considered the advisability of taking from their own courts the power to construe their own constitution had they realized that while the Constitution of the United States stands they were impotent to deprive those same courts of power to construe that charter."

It is similarly difficult to conceive that the people of Colorado would, willy-nilly, have changed their Senate from 35 to 39 members, without any substantive reason, or place for assignment, or demonstrated need, the scheme requiring that number being manifestly invalid; or that they would have voted in favor of a "reapportionment" measure, appearing on the ballot specifically as such, when that measure, though captioned as an act "For the *apportionment* of the senate and house of representatives of the general assembly, etc." was utterly inoperative as to any apportionment feature. No act, apart from an apportionment act, was submitted to them concerning numbers

of representatives, nor singularity or multiplicity of district, and it is not permissible to conjecture what they might have done if such an act had been submitted.

It is an interesting query what becomes of the Colorado Constitution if fragments of Amendment 7 be adopted. Textually, which fragments of that Amendment stand, and which go; which whole or partial sections of the former constitution remain in the text, and which are obliterated? There is no answer readily available, and its lack, we submit, dooms appellants' proposition.

The principal subject matter of Amendment No. 7 was *apportionment*. The apportionment is void, beyond question. No provisions thereof survive. As stated by the Colorado Court, in *In Re House Bill No.* 165, 15 Colo. 595, 26 Pac. 141 (1890), when asked about the validity of certain proposed legislation: "Upon consideration of the various matters involved in the questions submitted, we are of the opinion that the principal provisions of the bill, with which the remaining provisions are inseparably connected in substance, cannot be upheld as constitutional; and hence the answer to the legislative inquiry must be that the bill as a whole is unconstitutional. Cooley, Const. Lim. p. 178." (at page 507).

D. An act, void in part, may be sustained as to the remainder only if the defective portion is so unimportant the legislation would have been passed without it.

Leddy vs. People, 59 Colo. 120, 147 Pac. 365 (1915) holds clearly that where one section of a statute is found to be beyond the legislative power and is of such importance that plainly the act would not have been passed with-

out it, then all sections and provisions relating to the matter of the section condemned must fall. It is difficult, so, to see how, when the apportionment provisions of an apportionment amendment fail absolutely, the subsidiary portions can stand. Discussing the matter at page 123 of the Report, the Court said:

> "It is urged that the fact that one section of a law is void does not necessarily make the entire statute invalid; and that such parts of the statute as may, independent of the invalid section, accomplish the purpose evidently intended by the law are valid and should stand. Hence, it is contended that though sec. 46 be invalid, the other sections which constitute a system of loaning school funds may be effectually carried out without it, and are therefore valid.
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> "This is true only in case that section be found to constitute *so unimportant a part of the loaning system* devised by the legislature, *that it is plain that the legislature would have passed the act without it.* Howard vs. Illinois C. R. Co. 207 U. S. 463, 52 L.Ed. 297, 28 Sup. Ct. 141." (Emphasis supplied).

Can it be said in anywise here that the apportionment provisions of Amendment 7 were so unimportant that the people of the State would have passed the amendment knowing that it did not apportion at all? We submit this "inconceivable".

This Honorable Court has held, and the Colorado Supreme Court has relied upon it in holding, that when different sections of a legislative act are so inter-dependent as to constitute an integral scheme of regulation, if one part thereof be declared invalid, then the whole must fall.

Thus, relying upon decisions of this Court, the Supreme Court of Colorado set forth the rule in *People vs. Morgan,* 79 Colo. 504, 246 Pac. 1024 (1926), invalidating certain cattle quarantine and inspection laws because invalid as applied to non-residents of Colorado, and because it could not be assumed that the provisions were intended to apply to Colorado, if their external effects were eliminated: (at pages 508-9).

> "The elimination of section six of the act suggests the question as to whether the remaining portion of the law can be sustained, under the provisions of section seven — the effect on the remainder when a part has been declared unconstitutional.
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> "We would give effect to the remainder if we could, if otherwise valid and in keeping with the intention of the legislature. But from the standpoint of the legislative intent, it cannot be sustained. To uphold the law, it would have to be made applicable to residents of Colorado, whereas the act itself plainly declares that such is not its purpose.
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> "In order to sustain the statute, we would have to create a valid measure out of an invalid one, by inserting provisions that the act does not contain. In the language of Mr. Chief Justice Taft, in Hill vs. Wallace, 259 U.S. 44, 70, 42 Sup. Ct. 453, 66 L.Ed. 822, 'This is legislative work beyond the power and function of the court.'
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> "When it is plain that the legislature would not have passed the act without the section condemned, the whole act must fall with it. Leddy vs. People, 59 Colo. 120, 147 Pac. 365; Connolly v. Union Sewer Pipe Co., 184 U.S. 540, 565, 22 Sup. Ct. 431, 46 L.Ed. 679.

> "The different sections of the act of the Legislature above set out are so inter-dependent, so 'essentially and inseparably connected in substance,' that when one falls, the whole structure goes down. 1 Lewis' Sutherland Statutory Construction 576, Sec. 296; Arthur v. State, 148 Tenn. 434, 256 S.W. 437; Howard v. Illinois C. R. Co., (Employers' Liability Cases) 207 U.S. 463, 501, 28 Sup. Ct. 141, 52 L.Ed. 297."

It is submitted that Appellants here request that this Court effectively make, from the bits and snatches of an invalid act which Appellants essay the electorate *might have passed* had the same been submitted to them, a Constitution for the State of Colorado. The People of Colorado alone make their constitution, so long as it is in consonance with the Constitution of the United States. It certainly cannot be assumed that they would have accepted as parts thereof, scrapping the existing fabric thereof, those shards of an apportionment measure left over after the apportionment itself was broken. The area is one at best of conjecture, and if conjectural, then invalidity follows as of course.

Denver vs. Lynch, 92 Colo. 102, 18 P.2d 907 (1932) involved the validity of an old age pension law, declaring the same invalid because the legislature purported to confer judicial duties upon officials of other departments, and because the Court conceived that the administrative provisions so invalid so colored the whole of the act as to render it non-severable. The Court states as principle that "if the invalid portion of an act was apparently *an inducement to passage of the valid*, the statute is not severable, nor can an essential part, which colors the whole, be striken as invalid, and the remainder be sustained."

It cannot be said that the apportioning portions of an apportionment act are not an "inducement to passage" of the remainder; that they do not "color" the same. Except for the invalid scheme of apportionment, why 39 members of the Senate? Except for the apportionment, indeed, why the Act?

> "An act or a statute may be constitutional in one part and unconstitutional in another, and, if severable, the invalid may be striken and the valid left stand. 6 R.C.L., p. 121, #121. The power of the court to make such a decision rests primarily upon legislative intent. If we may reasonably presume that the General Assembly would have passed this act with the commissioners eliminated and the sole power to fix the amount of the allowance vested in the county judge, we may thus emasculate and thus sustain it. Id. p. 123, #122. *If the invalid portion of the act was apparently an inducement to the passage of the valid, the statute is not severable.* Id. p. 125, #123. *Nor can an essential part of an act, which colors the whole, be stricken as invalid and the remainder sustained.* Id. p. 127, #125." (pages 107-8). (Emphasis supplied).

So rooted in reason is the rule that even an express severability clause will not save an enactment an integral part of which is void. *American Federation of Labor et al. vs. Reilly, et al.*, 113 Colo. 90, 155 P.2d 145 (1945) involved the question of validity of the Colorado Labor Peace Act. The trial court held sections requiring compulsory incorporation invalid, but upheld the remainder of the Act. The Supreme Court held that where one provision of a section of a legislative act was invalidated, the entire section must fall where its other provisions are so inseparably inter-

twined and predicated upon the invalid features as to be unable to stand without them. The Court further, and most importantly, found that legislature "deliberately and expressly" so intertwined procedure for strike vote with the interdicted incorporated procedures that all must perish. "To fill this vacuum would require rewriting the act, which no court properly may do." (at page 102).

The language is substantially parallel to that of Mr. Justice Taft in *Hill vs. Wallace*, quoted above, and approved in *People vs. Morgan*, and of course is sound. It is not for the Courts to make a constitution for the people out of fragments it is supposed they might have approved in circumstances other than exist.

In *Four County Dist. vs. Commissioners*, 149 Colo. 284, 369 P.2d 67 (1962), a complex case involving the constitutional validity of statutes authorizing the formation of a four-county capital improvement district, and invalidating the same as in violation of the principles of municipal home rule expressed in the Colorado Constitution, the Colorado Court quoted at length that material above quoted from *Denver vs. Lynch*, and held that "the impact of the statute upon the City and County of Denver, and all the home rule cities included within the area, is such that the affairs of such cities cannot be severed from the operation of the statute, even though it might be upheld against numerous other challenged to its validity. The test of severability is stated by this court in *Denver vs. Lynch*, 92 Colo. 102, 18 P.2d 907, as follows: (quoting the referred matter)." Accordingly, that very major Act fell as a whole.

E. The Colorado court has recognized as void Amendment 7, and has itself expressed in strongest terms the test of severability as regards apportionment legislation.

As we have mentioned in outlining the facts concerning the present controversy, the United States District Court, upon remand by this Court of *Lucas vs. General Assembly*, held Amendment 7 to be non-severable and to have been wholly voided by that decision, and ordered elections for 1964 under a legislative enactment passed in consonance with the Colorado Constitution as it existed prior to Amendment 7.

A question was raised, not here in issue, as to whether or not, under the Colorado Constitution and Article V, Section 47, quoted above, single-member districts were permitted. Two of the three judges of the United States District Court thought they were and so held.

Two original proceedings before the Colorado Supreme Court, *White vs. Anderson*, ... Colo. .... (No. 21252), 394 P.2d 333, and *MacDonald vs. Love*, ... Colo. .... (No. 21373), 394 P.2d 345 (July 17, 1964), raised the issue whether that preexisting Article V, Section 47, of the Colorado Constitution does or does not permit single-member districts.

It is to be borne in mind that the litigation involved only the *old provisions* of the Colorado Constitution. Such provisions could have been in effect *only* if Amendment 7 was totally void. If it were not, and if the matters were as the Appellants claim them, the cases would have been moot entirely, for the districting provisions of Amendment 7 would have been applicable, and the meaning of

Article V, Section 47, would have been without consequence.

In the first of the cases mentioned, The Secretary of State of Colorado and the Clerk and Recorder of Pueblo County were parties Defendant, represented, as are the Appellants here, by the Attorney General of Colorado, In the second of the cases, Governor Love, the Secretary of State, the Attorney General, and the Forty-Fourth General Assembly are the Defendants. The cases were consolidated for hearing, and the same opinion governs both. Thus, the official parties who here appear as appellants were principally before the Colorado Supreme Court, and apparently did not there contend, as they do here, that Amendment 7 is still in effect as to districting, but apparently argued, and the cases were decided upon, the proposition that pre-existing Article V, Section 47, permits single-member districts.

As we have mentioned above, this Court in footnote 21 to its Opinion in *Lucas vs. General Assembly*, indicates that no federal constitutional problem inheres whether election be by single member districts or at large.

Whether or not the single-member district is permissible, then, under Article V, Section 47, of the Colorado Constitution becomes primarily a matter of state constitutional law.

The Colorado Court stated that "we defer to the federal court in the resolution of federal questions", and in its opinion quoted from *Lucas vs. Forty-Fourth General Assembly* [Reporter, pages 334-5], reversing for unconstitutionality of Amendment 7 and remanding to the United States District Court.

The Colorado Court further states:

> "A course of action looking to the preservation of elections was pursued by state officials. Rather than petition for a re-hearing in Lucas with its time-consuming pace of resolution, the Governor convoked a special session of the legislature *for the purpose of apportioning the state in accordance with Article V, Section* 45-47, *of the State Constitution.* Such special session received approval of the three judge federal court to which had been remanded the Lucas case. (Emphasis supplied).

The language is the clearest recognition by the Colorado Supreme Court that Amendment 7 does not exist in whole or in part, and that it is concerned only with the provisions of Article V, Section 45-47, as they existed before purported amendment.

The Court then considers solely what it considers "dictum expressed by two judges, to which the third raised his dissent, [which] declared that division of counties into multiple senatorial and representative districts was valid." It considered only the meaning of Section 47, Article V, which it and all parties before it, including the official Appellants who are moving parties before this Court, apparently conceded was in full force and effect, Amendment 7 being void. The Colorado Court disagreed with the United States District Court, and held that under Article V, Section 47, the single-member districts were not permissible.

The Court specifically discussed the question of *severability* with reference to apportionment matters [at pages 337 et seq.]:

"We must now determine whether the portions of the Act dealing with the division of single counties into multiple legislative districts are severable from the remainder of the Act. As illustrative of the difficulties confronting the court in any attempt to hold the invalid portions of the Act to be severable from valid portions, we refer to Section 1 and Section 2(f) of the Act.

"Section 1 of the Act provides that there shall be only one senator for each senatorial district. Section 2(1) of the Act provides that 'There shall be nine senatorial districts within the City and County of Denver,' (not nine senators from Denver), and then proceeds to set up those senatorial districts. If we strike Section 2(1) from the Act as invalid, we are left with no senatorial districts in Denver nor with any provisions for senators from Denver. The same situation applies to other counties which have been divided into multiple districts.

Without representation from Denver and from other multiple district counties, the Act obviously cannot stand. In determining a section to be severable we may certainly strike a section of that Act as invalid, but we cannot enact another section to take its place, for that is solely a legislative function. And if the purposes of the Act cannot be carried out without the section which is striken, as it cannot be here, then the Act is not severable the entire enactment must fail. City and County of Denver vs Lynch, 92 Colo. 102, 18 P.2d 907, 86 ALR 907."

The Colorado Court then held that, despite the weakness of the Senate Bill under Article V, Section 47, of the

Colorado Constitution, it was perfectly possible to hold an election under that Bill and the Order of the United States District Court, since the Bill did not offend and was in consonance with the requirements of the Fourteenth Amendment and the Lucas case. The Colorado Court stayed its order until after the election of the 45th General Assembly, and the elections were conducted in accordance with the requirements of the Order of the United States District Court and the provisions of Senate Bill No. 1.

It is clear from these Colorado cases that Amendment 7 has no effect whatsoever, and that, as a matter of State Constitutional Law, it has been recognized by the Colorado Supreme Court, as well as by the official defendants who are here appellants, that the old constitutional provisions, Article V, Sections 45-47, are in full force and effect.

It is further clear that if, as the Colorado Court points out, the provisions of a legislative act separating and dealing with the separation of counties into single-member districts as part of an apportionment statute cannot be severed from the parts of that statute dealing with apportionment, then most certainly those sections of Amendment 7 dealing with permissive creation of single-member districts cannot be separated from the remainder of the Amendment, when the totality of the apportionment as continued in the Amendment fails as unconstitutional.

The Colorado Supreme Court decisions were unappealed. Defendant state officials and General Assembly, who are here among the appellants, were parties there. The cases are finally at rest and disposed of. In view of these circumstances, it is most respectfully submitted that there is simply no substantial issue to be decided by the

Supreme Court of the United States in this appeal, and that fundamentally it is attempt to imperil an election which has already been held under the orders of the United States District Court, with acquiescence of the Colorado Supreme Court, and to reverse a ruling of the Colorado Supreme Court on the meaning of the Colorado Constitution, which has become final and has been unappealed, and time for appeal of which has passed. Moreover, the questions here presented appear to be questions entirely resolved in the statements of this Court in its Opinion heretofore rendered in *Lucas vs. General Assembly*.

CONCLUSION

For each of these reasons, we most respectfully submit to this Honorable Court that it is manifest that the questions on which decision of this appeal depends, and sought to be presented thereby, are so insubstantial, and have heretofore been so entirely resolved, as to need no further argument and to present nothing for determination by this Honorable Court. It is accordingly prayed that the said appeal be dismissed, and that the judgment below be affirmed.

Most respectfully submitted,

CHARLES GINSBERG
Boston Building
Denver, Colorado 80202

GEORGE LOUIS CREAMER
928 Equitable Building
Denver, Colorado 80202

Attorneys for Appellees.

...RY
...COURT, U. S.

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FILED
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JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

NO. 661

THE FORTY-FOURTH GENERAL ASSEMBLY OF THE STATE OF COLORADO, JOHN LOVE, as Governor of the State of Colorado, HOMER BEDFORD, as Treasurer of the State of Colorado, BYRON ANDERSON, as Secretary of State of the State of Colorado, EDWIN C. JOHNSON, JOSEPH F. LITTLE and WILBUR M. ALTER,

Appellants,

VS.

ANDRES LUCAS and ARCHIE L. LISCO, individually and as citizens of the State of Colorado, taxpayers and electors therein, for themselves and for all other persons similarly situated,

Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

BRIEF OPPOSING MOTION TO DISMISS OR AFFIRM

DUKE W. DUNBAR
Attorney General
State of Colorado

CHARLES S. VIGIL
E & C Building
Denver, Colorado

RICHARD S. KITCHEN, SR.
First National Bank Building
Denver, Colorado

STEPHEN H. HART
JAMES LAWRENCE WHITE
WILLIAM J. CARNEY, JR.
500 Equitable Building
Denver, Colorado

Attorneys for Appellants

Ray F. Frey Co., Denver, Colo.

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Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

BRIEF OPPOSING MOTION TO DISMISS OR AFFIRM

STATEMENT OF THE CASE

Appellees have filed a Motion to Dismiss or Affirm which does not contradict any of the basic factual matters set forth in the Jurisdictional Statement and its Appendices.

Appellees do not deny the jurisdiction of this Court but, fundamentally, argue that the issues presented on this appeal, although not previously briefed, argued or

decided, are foreclosed or insubstantial. Appellees' principal argument is that the provisions of Amendment 7 requiring single member districts within counties cannot stand alone.

If Appellees' contention is correct, the express will of the people of Colorado—that there be established a system of districting based on the principle of one voter, one choice —will be frustrated. If at-large elections are established in Colorado's multi-member counties, as, appellees say, is to result from the opinion in *White v. Anderson*, ... Colo. ....., 394 P. 2d 333 (July 17, 1964), the result will be that minorities in large counties will be totally submerged. As the record presented in *Lucas v. Forty-fourth General Assembly of Colorado*, 377 U.S. 713, demonstrates, instead of unequal representation, there will be little or no representation for these groups. Appellees here have argued that underrepresentation, by means of mal-apportionment, is a matter of substantial concern to the United States Supreme Court, and this Court agreed; Appellees now argue that so long as theoretical mathematical equality is the rule of the day, practical inequality, through no representation at all, is a matter of no substance.

ARGUMENT

A. THIS COURT HAS NOT RULED THAT AMENDMENT 7 FAILS IN TOTO.

Appellees contend that the language of this Court's prior opinion forecloses the question of severability of Amendment 7, even though this issue was not presented, argued or briefed. Appellants submit that this Court is capable of determining the meaning of the words used by it in *Lucas*. Eschewing further argument of this question, we again refer to the portion of the majority opinion defining the issue in that case as "the validity . . . of the *apportionment of seats* . . . " under Amendment 7, 377 U.S. 713 at page 715, and whether the lower Court erred " . . . in

holding the legislative *apportionment* plan embodied in Amendment No. 7 to be constitutionally valid", 377 U.S. 713 at page 735 (emphasis added).

Finally, in their attempts to read into the prior opinion of this Court approval of the end result they desire, appellees state (while admitting the matter is not in issue) that this Court has approved at-large elections in multi-member counties. Note 21 at 377 U.S. 731 simply says that the Court does "not intimate" that at-large elections are invalid. This question was not before the Court and, of course, was not decided one way or the other. However, under the equal protection standard of *Reynolds v. Sims*, 377 U.S. 533, and companion cases, it is difficult to imagine a districting scheme combining at-large voting in one area and single member districts in another which would not be invidiously discriminatory. *Dorsey v. Fortson*, N.D. Ga., 228 F. Supp. 259 (March 1964); *Harris v. Shanahan*, 192 Kans. 629, 390 P. 2d 772 (March 1964). This would be true except under most unusual circumstances even though at-large elections are not deemed to be invalid, *per se*, *Butcher v. Bloom*, ... Pa. ....., 203 Atl. 2d 556 (September 1964); *Moss v. Burkhardt*, W.D. Okla., 233 F. Supp. 323 (August 1964).

At any rate, it is not argued here that the citizens of Colorado wished to eliminate at-large voting because it is or may be unconstitutional. It is argued that elimination of the evils of at-large voting was a principal, independent part of Amendment 7. As the record in *Lucas* shows, in Colorado's largest counties elections at-large had become mere lotteries, giving rise to a tendency to select candidates primarily on the basis of good old Anglo-Saxon names beginning with "A", "B", or "C". See Appendix D. Thus the fact remains without speculation that the citizens of Colorado did adopt Amendment 7, thereby establishing a valid and desirable districting system. The obverse proposition, that the invalidity of the other phases of the act

embodying the apportionment of seats should not defeat this valid portion, is evident.

B. WHETHER A LAW IS VOID FOR ALL PURPOSES UPON BEING ADJUDGED UNCONSTITUTIONAL IN PART, DEPENDS UPON ITS SEVERABILITY.

Conceding, *arguendo*, appellees' point that a law judged unconstitutional is void for all purposes (a proposition which may not survive close scrutiny in the light of *White v. Anderson*, *supra*) appellants respectfully submit that the argument begs the issue of severability presented by this appeal. Indeed, appellees have proved too much, for the very case cited by them, *Coulter v. Routt County*, 9 Colo. 258, 11 P. 199 (1886) held the act in question severable and therefore *not void* for all purposes!

C. APPELLANTS AND APPELLEES AGREE THAT THE RULES AS TO SEVERABILITY OF STATUTES AND AS TO SEVERABILITY OF CONSTITUTIONAL PROVISIONS ARE THE SAME UNDER COLORADO LAW.

While asserting this proposition appellees ignore the applicable statute, Colo. Rev. Stat. 1953, Sec. 135-1-5, set forth in full at page 11 of the Jurisdictional Statement. Perhaps this oversight arises from appellees' unwillingness to recognize the presumption favoring severability so clearly established by the statute as the policy of Colorado law.

On this subject, appellees also represent that Amendment 7 was an apportionment measure and only an apportionment measure, conveniently omitting a part of the caption of the act. Appellees quote the caption as "For the apportionment of the senate and house of representatives of the general assembly, *etc.*" (emphasis added). The "et cetera" reads "*and providing* for senatorial *districts* and representative *districts*" (emphasis added), thus clearly expressing a purpose in addition to apportionment. It should not be difficult for appellees to conceive of the

people voting for a measure establishing districting, because that is precisely what they did.

A fair reading of Amendment 7 leads to the inescapable conclusion that it contains many "principal provisions" other than apportionment which are capable of standing alone, in accordance with the intent of the people, when the apportionment features are deleted. *In re House Bill No. 165*, 15 Colo. 595, 26 P. 141 (1890) is therefore inapposite.

D. THE RULES OF SEVERABILITY AS WELL ESTABLISHED IN COLORADO ARE NOT CORRECTLY STATED BY APPELLEES.

Instead of the rule set forth in the statute, appellees would have this Court accept certain dicta taken out of context as conclusively articulating a wholly contrary view. If the rule urged by appellees is correct, to-wit, that no act will be deemed severable if the void portion was "an inducement" to the passage of the act (the word "inducement" being used in appellees' context as synonymous with "motive" or subjective intent), then it would follow that *no* legislative act could be upheld if any one of its substantive terms were stricken. As the cases cited in the Jurisdictional Statement disclose, this clearly is not the law in Colorado. On the contrary, as shown at page 12 of the Jurisdictional Statement, the rule in Colorado is that if the portion of an act remaining is capable of being executed in accordance with the legislative intent and is complete in itself, it *must* be sustained.

The word "inducement", as used in the Colorado cases appears, in proper context, to mean not merely a reason for the passage of the act but a "purpose" of the act, without which the remainder is meaningless, useless, incomplete, or reaches a result contrary to that intended. There is no reason disclosed by the record, or otherwise, to assume that the people of the state of Colorado would not have adopted a measure eliminating the state census, changing

the size of the legislature, requiring single-member districts and providing penalties for failure to redistrict, whether or not the measure also contained a plan of apportionment. In 1950 the people did adopt a measure referred by the legislature (Colo. Sess. Laws, 1951, Ch. 223, p. 553) to increase the size of the legislature. Colo. Constitution, Article V, Sec. 46; 1935 Colo. Statutes Ann. Vol. 5, 1953 Supp. It is apparent that the "motive" or "inducement" for this action was to prepare for reapportionment, which was carried out in 1953, Colo. Session Laws, 1953, Ch. 37, p. 120. This apportionment plan was held invalid in *Lisco v. McNichols*, D. Colo., 208 F. Supp. 471 (1962), but no one would argue that, because the apportionment plan of 1953 was invalid, the action of 1950 to increase the size of the legislature also would fall. It is difficult to understand why similar action combined in one bill in 1962 should be treated differently, merely because adopted on one occasion instead of two.

The cases cited by appellees, *Leddy v. People*, 59 Colo. 120, 147 P. 365 (1915); *People v. Morgan*, 79 Colo. 504, 246 P. 1024 (1926); *Denver v. Lynch*, 92 Colo. 102, 18 P. 2d 907 (1932); *American Federation of Labor, et al. v. Reilly, et al.*, 113 Colo. 90, 155 P. 2d 145 (1945), and *Four County District v. Commr.*, 149 Colo. 284, 369 P. 2d 67 (1962) are all distinguishable from the case at bar on their particular facts. In *Leddy* the invalid portion was the means of providing security for the loan authorized, thus the valid part, standing alone, accomplished a result totally different from that intended. In *Morgan*, the act was incomplete without the invalid part and could not have been rendered complete "except by inserting provisions that the act does not contain." In *Lynch*, the effect of invalidity of one part was to *add* powers not conferred by the act upon a different branch of government, again obviously a result different from that intended. In *Reilly*, the act was held severable, and certain sections were "*expressly*" dependent upon others. In *Four County District*,

after the invalid parts of the act were stricken there were no substantive provisions left.

In short, the cases cited by appellees are simply not in point.

Finally, contrary to the proposition posed by appellees is the clear rationale of the three-judge District Court for the Western District of Oklahoma. The case of *Reynolds v. State Election Board* and *Moss v. Burkhardt*, W. D. Okla., 233 F. Supp. 323 (Supplemental Order, August 19, 1964), is very nearly on all fours with the situation in Colorado. In that case the court said at 238 F. Supp., page 328:

> "We also accept the Attorney General's view that the 'Amendment was proposed by the Legislature and adopted by the people, both charged with knowledge of the supremacy of the Federal laws, and, in truth, aware that standards and guidelines were in the process of formulation in the Federal courts, and aware that the apportionment formulae in said amendment would, of course, be subordinate to the standards being so formulated.' The appropriate remedy for existing malapportionment, the people intended for it to prevail as basic law to the extent that it is in conformity with the supreme law of the land and that it would fail only insofar as it must yield to the Supremacy Clause of the Federal Constitution. To paraphrase the words of the Attorney General, we will not strike down the amendment in toto, because one Article contravenes Federal guaranties, nor an Article because a Section is void, nor a Section because a clause is bad. And see: *Guinn v. United States*, 238 U.S. 347, 366, 35 S. Ct. 926, 59 L.Ed. 1340."

The situation in Colorado is identical, in that Amendment 7, initiated concurrently with the decision in *Baker v. Carr*, 369 U.S. 186 (1962), and adopted by the people after promulgation of the opinion in *Lisco v. McNichols*, D. Colo., 208 F. Supp. 471 (1962), must be considered in light of the presumption favoring severability and the obvious fact that the people intended its provisions to take

effect, subject only to the rulings of the courts as to those portions, if any, offending the Federal Constitution.

E. THE COLORADO COURTS HAVE NOT EXPRESSED ANY OPINION ON THE SEVERABILITY OF AMENDMENT 7, NOR ISSUED ANY APPLICABLE ORDER RELATING TO THE MATTERS PRESENTED ON THIS APPEAL.

Appellees argue at some length that this Court is foreclosed from deciding an issue properly before a statutory three-judge District Court on appeal because of subsequent action by a State court. To state the proposition as a rule of appellate jurisdiction is to refute it.

When appellees state that the Colorado Supreme Court "recognized" Amendment No. 7 as void, they are once again attempting to read into judicial opinions holdings that simply are not there. What the Colorado Supreme Court recognized, albeit somewhat reluctantly, was that the District Court had acquired jurisdiction over the question of legislative apportionment, had issued an order, and stood ready to enforce that order, if necessary, under 28 U.S.C. § 2283. *White v. Anderson*, 394 P. 2d 333, and *Macdonald v. Love*, 394 P. 2d 345, are simply the interpretation of the Colorado Supreme Court of the meaning of Section 47 of Article V of the Colorado Constitution as it stood on July 17, 1964, giving effect to the decree and order of the District Court. The question of severability of Amendment No. 7 was not raised by any party before the Colorado Court in those cases, and, in view of the order of the District Court, should not have been so raised. The attempt of appellees on page 21 of their motion to fault appellants for a failure to relitigate this question hardly comports with accepted concepts of orderly relations between State and Federal courts.

The directive of the Colorado Supreme Court making absolute a rule to show cause and staying the effect of its order to a future date for further proceedings in light of

legislative action is not a final order from which an appeal can be taken, *Republic Natural Gas Co. v. Oklahoma*, 334 U.S. 62. (1948). Under the Colorado Constitution providing for two legislative sessions prior to the General Election of 1966 (Colorado Constitution Article V, Section 7) no action or non-action by the legislature can be finally evaluated by the Colorado courts until the Spring of 1966. Furthermore, not all of the parties here were parties in the *White* case. Therefore the lack of an appeal in that case cannot be construed as a concession of the validity of the opinion rendered by that court.

The bootstrap attempt of appellees to treat this matter as foreclosed may prove that *appellees* have never been concerned with any part of Amendment 7 other than apportionment. It shows nothing more.

CONCLUSION

The consequences of thwarting the desires of the Colorado electorate by prohibiting subdistricting and voiding other provisions of Amendment 7 having nothing to do with apportionment, as such, are grave and substantial and have not been foreclosed by any judicial decisions or legislative action. It is essential that the United States Supreme Court re-affirm the principle that the integrity of state actions will be respected to the extent that it is possible to do so under federal constitutional limitations. Appellees have stated no grounds for rejecting this appeal.

Respectfully submitted,

DUKE W. DUNBAR
Attorney General
State of Colorado

STEPHEN H. HART
JAMES LAWRENCE WHITE
WILLIAM J. CARNEY, JR.
500 Equitable Building
Denver, Colorado

RICHARD S. KITCHEN, SR.
First National Bank Building
Denver, Colorado

CHARLES S. VIGIL
E & C Building
Denver, Colorado

Attorneys for Appellants

The following are the surnames of legislators from Denver for the six regular sessions preceding adoption of Amendment 7. Members are elected from the county at-large; senators for four years, representatives for two:

SENATE

1951	1953	1955	1957	1959	1961
Bennett	Bennett	Bennett	Bennett	Bennett	Allen
Bezoff	Bezoff	Bishop	Bishop	Bishop	Bennett
Bishop	Chrysler, H.	Chrysler, H.	Brown	Brown	Bishop
Chrysler	Chrysler, R.	Danks	Clarke	Clarke	Brown
Dunklee	Dunklee	Dunklee	Cleary	Cleary	Byrne
Henry	Knous	Knous	Danks	Donnelly	Chenoweth
McNichols	McNichols	Nicholson	Dunklee	Roth	Cleary
Nicholson	Nicholson	Pomponio*	Roth	Saunders	Saunders

* Appointed

HOUSE

1951	1953	1955	1957	1959	1961
Allen	Allen	Allen	Allen	Allen	Bain
Best	Best	Aspinwall	Aspgren	Byrne	Burch
Burch	Burch	Beck	Beck	Calabrese	Burk
Burk	Burk	Bell	Burch	Dines	Byrne
Butz	Burnett	Burch	Burk	Dolan	Calabrese
Caldwell	Caldwell	Burk	Byrne	Gallegos*	Dines
Carter	Carr	Calabrese	Cobb	Gilbert	Dolan
Chrysler, H.	Carter	Caldwell	Dines	Holland	Eberhardt
Crowley	Hays	Chenoweth	Gallegos*	Johnson	Gallegos*
Danks	Hodges	Clarke	Holland	Kelley	Gilbert
Gould	Holland	Cowperthwaite	Kelley	Klein	Johnson
Hart	Jackson	Hays	Klein	Moore	Kelley
Hays	Kemp	Hodges	Moore	Morrissey	Knox
Holland	Knowles	Holland	O'Donnell	O'Donnell	O'Donnell
Mann	Mann	Kelley	Slattery	Romer	Romer
		Lehman	Streltzer	Streltzer	Rubin
		Slattery	Woodhouse	Woodhouse	Streltzer

*Although persons with Spanish-American surnames constituted 6% of Denver's population in 1950 and 8.7% in 1960, Representative Gallegos is the only one of this extraction ever elected, at-large, from Denver.
Persons with Spanish-American surnames comprised 16.4% of the population of Pueblo County in 1950 and 21.4% in 1960. No person of this extraction has even been elected, at-large, from this county.
Source: U. S. Bureau of Census. Numbers and percentages of persons with Spanish-American surnames were not officially reported prior to 1950.